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THE INTELLIGENCE COMMUNITY: KEEPING WATCH OVER ITS CONTRACTOR WORKFORCE

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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THE INTELLIGENCE COMMUNITY: KEEPING WATCH OVER ITS CONTRACTOR WORKFORCE

WEDNESDAY, JUNE 18, 2014

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Committee, presiding.

Present: Senators Carper, McCaskill, Tester, Coburn, and Ayotte.

OPENING STATEMENT OF CHAIRMAN CARPER

Chairman CARPER. The hearing will come to order.

Dr. Coburn and I today are going to be examining, along with our colleagues, some of the challenges that agencies have in managing the large contractor workforce we rely on to do some of the most sensitive and important work that our Federal Government does. It is essential that the leadership of any organization should have good visibility over its workforce. They need to know who makes it up, what skills they have, what skills they lack, and what they do day in and day out. Nowhere is this more important than with the Federal agencies in charge of protecting our Nation and our Nation's sensitive information.

The men and women who work at our Nation's intelligence agencies are entrusted with obtaining, analyzing, and protecting our most sensitive information. The people we entrust with leadership roles at these agencies need to be able to show the American people, and Congress, that they know who is working for them, and why.

Contractors in the Intelligence Community (IC) perform key functions at the heart of intelligence collection, management, and analysis. They work side by side with Federal employees and are given access to our most sensitive information. This extensive reliance on contractors raises a number of risks:

First and foremost, an agency that turns over too much responsibility to contractors runs the risk of hollowing itself out and creating a weaker organization. The agency could also lose control over activities and decisions that should lie with the government, not with contractors.

Second, the use of contractors for mission-critical work creates an additional layer of management between the contractor employees and the government. Adding layers makes it more difficult to conduct oversight and to assign accountability.

And, third, when agencies turn to contractors as a "default" option without careful analysis, they run the risk of paying more to get work done than they would have paid if they had just relied on Federal employees.

While the precise number of employees at each intelligence agency is classified, it is no secret that following September 11, 2001, the Intelligence Community ramped up its workforce, including its use of contractors. In response to concerns that the Intelligence Community had become too reliant on contractors, the Office of the Director of National Intelligence (ODNI) began in 2006 to conduct an annual inventory of contractors performing core functions at the heart of intelligence operations. The goal of this inventory is to provide a snapshot of the size of the intelligence contractor workforce, its costs, the functions it performs, and the reasons cited by agencies for using the contractors.

The hearing will focus on the Government Accountability Office (GAO) report requested by our former colleague Danny Akaka, with support from Senators Coburn, Collins, McCaskill, Johnson, and myself. We asked GAO to look closely at the annual inventory of core contractors and find out how well it is really working in helping agencies better know and manage their workforce.

GAO's findings reveal that the numbers in the inventory simply are not reliable and that the intelligence agencies do not have the kind of information they need in order to be able to assess the cost-benefit of using contractors, to conduct strategic workforce planning, and to determine the role that contractors should play in their organizations. In other words, we do not have the full picture of who is working for the Intelligence Community as contractors, or why.

While the GAO's report shows a number of problems, I like to say that in adversity lies opportunity. If the Intelligence Community can get past its initial learning curve in conducting these inventories, it will have what is potentially a very useful tool that can be used to help make better decisions about its entire workforce. These inventories could help the Office of the Director of National Intelligence and the individual intelligence agencies identify where their critical skill gaps are. The inventories could also help identify where the government is paying too much for contractors or where agencies could save money through strategic sourcing.

We look forward to hearing from the witnesses today about the progress that ODNI and the intelligence agencies have made in responding to GAO's findings and recommendations. And I note that the Intelligence Community has been ahead of the rest of the government in creating an inventory of contractors whose work raises special risks. So there are a lot of good lessons that we are going to learn today that maybe the rest of our government can use.

So we welcome each of our witnesses. We look forward to what you have to say and to have an opportunity to a good conversation with you.

And, with that, let me turn to Dr. Coburn for any comments he wants to add. Thank you.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Mr. Chairman, thank you for holding the hearing. I will put my statement into the record[1] and use parts of it in our questioning.

Thank you.

Chairman CARPER. You bet.

Senator Tester, nice to see you. I think you have done a little work on this issue, as I understand it. Is that right?

Senator TESTER. Yes, we have.

Chairman CARPER. Do you want to say anything just briefly?

Senator TESTER. I will just put it in the record. Thanks.

Chairman CARPER. Senator McCaskill, how is your husband doing? That is good. Anything you want to say before we jump into this?

Senator MCCASKILL. No.

Chairman CARPER. OK. Brief witness introductions.

We are pleased to welcome before the Committee Stephanie O'Sullivan, who is the Principal Deputy Director of National Intelligence at the Office of the Director of National Intelligence. In that capacity, she serves in a role similar to that of a chief operating officer (COO), I am told. Is that right?

Ms. O'SULLIVAN. That is right.

Chairman CARPER. All right. She focuses on the operations of the Office of the Director of National Intelligence and also manages coordination and information sharing across the Intelligence Community. Ms. O'Sullivan has served in this role since early 2011, and before this assignment, Stephanie served from 2009 to 2011 as the Associate Deputy Director of the Central Intelligence Agency (CIA) with an emphasis on day-to-day operations of the organization. She also has previously led the CIA's Directorate of Science and Technology.

Stephanie, we thank you for joining us today.

Also we want to welcome our second witness, Timothy DiNapoli.

Timothy DiNapoli, who is the Director of the Acquisition and Sourcing Management team at the Government Accountability Office, and Tim led GAO's review that is the discussion of our hearing today. He joined GAO in 1986 and has led many reviews relating to Federal acquisitions by both the Department of Defense (DOD) and the civilian agencies. In 2009, he served as the head of GAO's office in Baghdad and coordinated GAO's oversight of the stabilization and reconstruction efforts in Iraq. We thank you for that. Tim is also no stranger to this Committee because he was detailed to then-Chairman Lieberman in 2007. Tim worked closely with both the majority and minority staff as this Committee moved forward on legislation to strengthen competition rules and help revitalize the acquisition workforce. He tells me before the hearing started that he once worked for Troy Cribb, who is sitting right behind me over my left shoulder, and said she was a great boss. And I would just say, Tim, she still is. So thank you for your work on this particular report and for all your work on acquisitions over the years.

[1] The prepared statement of Senator Coburn appears in the Appendix on page 29.

And, with that, we will just allow each of you to give us your statement, and then we will start with some questions. Stephanie, please proceed.

TESTIMONY OF THE HONORABLE STEPHANIE O'SULLIVAN,[1] PRINCIPAL DEPUTY DIRECTOR, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Ms. O'SULLIVAN. Chairman Carper, Ranking Member Coburn, and distinguished Members of the Committee, thank you for your invitation to discuss core contractors in the Intelligence Community, and thank you also for your patience with our just-in-time arrival. I am afraid we may have pinched a few too many pennies in our vehicle maintenance. We had a few transmission challenges as we left this morning.

I personally believe that strategic management of the IC's workforce is one of the most important things that IC leaders do, and so I appreciate this Committee's dedication to examining these important issues.

I would like to define up front whom we are discussing. I see core contractor personnel augment government, civilians, or military employees by providing direct technical, managerial, and administrative support to IC elements. They typically work alongside government employees and in our spaces doing staff-like work. So they are not the people that we contract with to build technical collection systems like satellites, and they are not the people who do common commercial jobs like food services or janitorial support.

Core contractor personnel hold clearances in accordance with the same laws, procedures, policies, and regulations as government employees for access to classified information. Core contractors do not perform inherently governmental work, meaning they do not make decisions on priorities, strategic direction, or commitment of resources. Only government employees make those decisions.

Core contractors are factored into our strategic workforce planning across the Intelligence Community. However, government staff are the long-term foundation of the IC's workforce.

Hiring a government employee is a long-term commitment. We are responsible for the training and development of a government employee over what could be a 30-year career span. We then manage our contractor workforce to fill in with the skills, whether surge or capacity or capability gaps that we have in our government workforce. As a result, there is not a right number of core contractors for the Intelligence Community. The numbers and skill sets have to be fluid to support and manage our government workforce's gaps as they emerge and as we close them and respond to dynamic mission needs.

You asked us here to talk about the trends in core contractor use. During the 1990s, like the rest of the Federal Government, the IC downsized and outsourced a lot of unique and specialized skills. After September 11, 2001, we found that we lacked the needed people with some core and unique skills, like terrorism analysis, critical language skills, and cyber.

[1] The prepared statement of Ms. O'Sullivan appears in the Appendix on page 30.

So with much appreciated support from Congress, we began to hire and rebuild our government staff. And while our government workforce over time has redeveloped those critical skills, we had to surge to fill the gaps with contractors.

We also used contractors for new missions that we knew were limited in duration rather than hire permanent staff for temporary work. War zone surges and Overseas Contingency Operations (OCO) funding are examples of those uses.

Contractors continue to be an integral part of our community, but as we expected, our needs have changed as we have gone on in the years since September 11, 2001. So over the past few years, Intelligence Community agency directors across the IC have moved to rebalance our workforce with fewer core contractors.

In 2007, in support of this, we conducted our first inventory to track core contractor personnel. As GAO's report has highlighted, this was not as easy as it sounded at first. The 17 elements of the Intelligence Community are spread across six departments plus two independent agencies. All of them have different systems and different resources subject to differing authorities, policies, and oversight, supporting an extended and extraordinary mission range with activities that can shift at the pace of the headlines.

There are also differences as mundane as how each element captures data and calculates their inventory. Some elements have automated systems; others compile their data manually. The inventory includes data from thousands of contracts, and for each contract, someone has to make the decision about how to categorize the work involved, so there are individual judgment calls involved as well.

Every year, we have looked at ways to improve this process. We, too, believe that this can be an extraordinarily useful tool, and it already has been for us. And this year, as recommended by GAO, we asked each element to fully explain their methodology used for identifying who counts as a full-time equivalent to a government staff. This should give us even better insight.

But this inventory was not designed to be 100 percent precise. I want to be clear. The survey was never intended to be an auditable record. It was a tool to give us a sense of the contractor workforce and to help us in our strategic workforce management.

Although it is possible to put a lot of effort into making it more precise, it is not necessarily going to make it more useful for the uses that we are putting it to. And we are careful about how precisely we manage the Intelligence Community at the community level. Director of National Intelligence (DNI) Clapper believes that the ODNI must coordinate and integrate across the community, while the agencies execute the mission. We attempt not to directly control the field elements from headquarters.

For core contractor inventory, we can focus on efforts that standardize how the agencies measure, but we cannot and do not want to manage each agency's workforce at the project level or the point of execution.

In line with that, the Intelligence Community Directive (ICD) 612 guides our use of core contractors. It refines and standardizes our definition of core contractor personnel. It reaffirms that core contractors cannot perform inherently governmental activities. It

describes the circumstances in which core contractors may be employed to support IC missions and functions. And it requires elements to estimate the current and projected number of core contractors and how we are using them. These are guiding principles.

Over the past several years, as I said, agency directors across the community have moved to rebalance the workforce with fewer core contractors, and our core contractor inventory has informed those decisions. And it has confirmed since then that we are making good decisions with this rebalance. We acknowledge that our inventory is not a precision instrument. Its role has been to support strategic level direction and discussion, and it has been very useful to us in this role.

That said, getting strategic management of the IC's workforce is profoundly important, and we will do anything we can to improve the tools that we use to achieve that. I hope this explanation starts the discussion and makes our work and how we view the core contractor inventory a bit more clear. I welcome your questions, though I may ask to defer some questions involving classified details to written responses or a follow-on session.

So thank you for your attention to the IC workforce.

Chairman CARPER. Good. And thanks for joining us. Thank you for your testimony, and we look forward to having some questions.

Mr. DiNapoli, please proceed.

TESTIMONY OF TIMOTHY J. DINAPOLI,[1] DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. DINAPOLI. Chairman Carper, Dr. Coburn, and Members of the Committee, good morning. Thank you for inviting me to discuss the Intelligence Community's use of contractors. As you know, contractors can provide the flexibility to meet immediate needs as well as access to unique expertise. But their use also introduces risks that must be managed. This is particularly the case for core contractors who provide direct support to the Intelligence Community and often sit side by side government personnel and essentially do the same type of work.

Last September, we issued a classified report that looked at three issues: one, the use of core contractors; two, the functions they perform and the reasons why they were used; and, three, the policies in place to mitigate risk.

Our work focused on the eight elements that make up the civilian side of the Intelligence Community, which includes the Office of the Director of National Intelligence, the Central Intelligence Agency, and elements within the Departments of Energy (DOE), Department of Homeland Security (DHS), Department of Justice (DOJ), State, and Treasury. In January, we issued an unclassified version of that report which is the basis for my statement today.

Let me begin by noting, as the Principal Deputy has, that the Intelligence Community has focused considerable attention on its use of core contractors. Since fiscal year (FY) 2007, under the direction of the Chief Human Capital Officer (CHCO) , the Intelligence Community has conducted an annual inventory of these core contrac-

[1] The prepared statement of Mr. DiNapolia appears in the Appendix on page 37.

tors. The data is used to provide Congress, the Office of Management and Budget (OMB), and others insights on budget requirements and historical trend information. For example, based on the inventory's data, the Intelligence Community reported that its use of core contractors had declined by about a third between fiscal years 2009 and 2011.

However, after reviewing 287 contract records from 2010 and 2011, and reviewing, analyzing inventory guidance, we would be cautious about drawing such conclusions. We found a number of limitations, including changes to the definition of "core contractors," inconsistent methodologies for estimating the number of core contractors, errors in reporting contract costs, and poor documentation, that, when you put them all together, undermined the utility, comparability, accuracy, and consistency of the inventory's information.

Let me give you two examples—the first concerning estimating contractor personnel.

One element which used actual labor hours estimated there were about 16 contractor personnel working on a particular contract. Another element which uses estimated labor hours would have estimated that there were 27 contractor personnel on that very same contract. Two different methodologies, and two very different outcomes.

The second example involves reported contract costs. We found that the elements either over or under reported contract costs by more than 10 percent in about a fifth of the records that we reviewed. Now, these were due to simple data entry errors or differences in how the elements record contract costs in the inventory. Nevertheless, we found that the inventory was unreliable for reporting contract obligations.

Let me turn now to the work that core contractors do. We found that the inventory at a broad level did, in fact, reflect the primary functions that the contractors performed, which included human capital, information technology (IT), intelligence analysis, and program management support. It fell a little short in terms of capturing all the functions that a contractor may be asked to perform, especially when contracts contain a broad array of tasks.

Further, the elements often lacked documentation to support their cited reasons for using contractors. For example, in about 80 cases in which the elements cited the need to obtain unique expertise, we did not find documentation in the contract files that would support that conclusion.

Knowing the reason why one uses a contractor is important, as hiring a contractor for their unique expertise has different implications for strategic workforce planning than if we hire them for surge support or for longer-term gaps in Federal resources.

Last, I will just briefly summarize our work with regard to the policies in place to mitigate risk. In September 2011, the Office of Federal Procurement Policy (OFPP) issued new guidance, in part to provide the appropriate scrutiny when contractors provide services that are closely associated with inherently governmental functions. Services related to preparing analyses or strategy options or providing acquisition support fall into this category.

While the guidance required agencies to develop internal procedures to implement this policy, we found that, of the agencies in our review, only the Departments of Homeland Security and State had fully done so.

Further, our prior work and guidance issued by the Office of Management and Budget in July 2009 indicate that agencies should develop strategic workforce plans that identify whether they are doing the right work with the right people, government or contractor, to accomplish their missions. Overall, we found that of the eight elements' workforce plans generally did not fully reflect these requirements.

As I noted before, one limitation of the inventory is that it does not capture all the functions that a contractor may perform under a contract. For example, of the 287 records that we reviewed, more than 125 contained more than one function, and it was not fully reflected in the inventory. Without complete and accurate information, the elements may be missing an opportunity to leverage the inventory as a tool for determining the right mix of government and contractor personnel.

Given these findings, we made several recommendations to the Chief Human Capital Officer to improve both the inventory and the Intelligence Community's workforce planning efforts. The Chief Human Capital Officer also generally agreed and discussed steps they were taking to address them.

We also made recommendations to the departments to set timeframes for implementing the Office of Federal Procurement Policy's guidance. The Departments of Justice and Treasury have recently concurred with that recommendation, and we are following up with them and other agencies to identify the steps that they are planning to take in response.

In conclusion, the challenges I highlighted today are not unique to the Intelligence Community, and we find many of the same issues with our work at the Department of Defense and the civilian agencies as a whole. The Intelligence Community, like all Federal agencies, though, needs to have the policies, tools, and data in place to make informed decisions about the use of contractors. Incorporating needed changes into guidance and improving the reliability of the inventory should better position the Intelligence Community to make more informed decisions in the future.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions that you may have.

Chairman CARPER. OK. Thank you. Thank you both for those testimonies.

I rode home on the train last night. I was tired riding home, and I read your testimony. And to be really honest, it was everything I could do to stay awake. And this is not dull stuff. This is really interesting stuff. Just set aside the—I do not know—the way you talk about this. And why is this real? Why is this important? Why should we care? Why should you care at GAO? Why should our President care? Why should our intelligence agencies care? Why is this important? Why should the American people care? Make it real.

Ms. O'SULLIVAN. From our viewpoint, as I said, I think that one of the most important things that any leader can do is manage the

workforce that is going to inherit the mission and carry things forward. It is 30-year decisions that we are making when we are talking about our workforce. They have consequence, they have weight. The effects last.

So one of the things that was most important about what the Intelligence Community did here—in the days after September 11, 2001, we were determined not to repeat the mistakes that we had gone through after we hollowed out the workforce in the 1990s. We knew we had to surge. We knew that the quickest way to do that was to use the flexibility that contractors give you. So we brought back people who had experiences. We brought on contractors that could fill those gaps. But from the very beginning, we had our eye on getting the mission done, but keeping track of the changes that had to be made down the road that we knew we would have to rebalance. And that is why we started using the core contractor inventory and that approach because it was going to start putting the focus back on shifting back to the government workforce that we had been allowed to hire, that we had started to train, and who was now moving to the front lines to take over a lot of these opportunities.

So if we had not done that, we would have ended up with excess capacity, we would have ended up with people that we did not need in the core contractor workforce, and we would have ended up with the inability to do parts of our mission because we could not have shifted costs off of that.

So this affects not only our ability to do our mission today but in the future, and that is why it is absolutely critical that we manage and pay attention to these functions.

Chairman CARPER. All right. Mr. DiNapoli, same question. Make it real for us.

Mr. DINAPOLI. I largely agree with what the Principal Deputy said. We were ill positioned after September 11, 2001, to address the new missions that came across because we cut the workforce in the 1990s without thinking strategically about why we were cutting and who we were cutting and what skills and capabilities we——

Chairman CARPER. We cut the size of government. I think we ended up in 2000 with fewer Federal employees than we had had in a long time. I think that was a goal.

Mr. DINAPOLI. That was a goal, absolutely. And we did achieve that. But we did that without thinking about what personnel do we have in-house. What is the capacity we have to move forward to address emerging issues that we were not aware of? And so when we turned—and I think appropriately so—to the private sector to provide us assistance to meet those new missions, whether they be in the Department of Defense, the Department of Homeland Security, the Intelligence Community, we hired many folks to do that.

Back in 2007, this Committee held a hearing that DHS testified at, and at that point in time, we had just issued one of our very first reports about DHS's reliance on contractors. And I do not think that DHS at that time agreed that it had an issue. But I think this Committee's efforts and the work that we did both then and subsequently found that DHS has agreed that they need to rebalance their workforce because they were out of sync.

And so since that point in time, with the introduction of DHS's balanced workforce study, the tools that they have in place, DHS continues to identify new areas and new opportunities to say we have gone too far; we are using contractors in areas that we think we want to bring back in-house or that we want to rebalance and make sure we have the right oversight.

So I think that is why it is important, because there is work that is important that the government does, and we need to make sure that that work is done either by government employees or by contractors that are appropriately supervised and overseen.

Chairman CARPER. Go back to the genesis of this. My recollection is this is something that Senator Akaka was very much interested in and focused on when he was with us. I think he had a hearing maybe in 2011 or 2012 on this subject, and he requested this report. And before he left, I think, in 2012, it was completed, what, a year or so later?

Mr. DINAPOLI. Slightly longer than a year or so later, yes.

Chairman CARPER. OK. When he made the request for the report, which several of us subsequently joined in as co-requesters, what was he asking for? What was he asking for you to help us understand?

Mr. DINAPOLI. He really wanted to know whether or not the kind of the issues that we had identified, much under the leadership and direction of the Senator and his Subcommittee on Oversight of Government Management, about looking at the Federal workforce issues, whether or not those same issues were prevalent in the Intelligence Community. So he wanted to know what was the Intelligence Community's reliance on contractors, what was their cost, and what were we doing to identify what functions they were performing and whether or not there were sufficient oversight mechanisms in place to make sure that those risks were mitigated.

Chairman CARPER. Just summarize for us in plain language, what did you find out?

Mr. DINAPOLI. In plain language, I would think that the inventory had a number of deficiencies. When you talk about some of the challenges that we identified, some are small, some are big. But at that point in time, they were talking about the inventory that was submitted back in 2011 or the 2011 inventory. There were just a number of challenges with it. And I think because of those challenges and——

Chairman CARPER. Well, people do not understand what we are talking about here in the inventory. Just make it real, please.

Mr. DINAPOLI. So the inventory, when you look at it, we can consider it to be a very large spreadsheet. It contains information on contractors, the number, their cost, other activities that they engage in. So it really does become just a tracking sheet, a mechanism to do that.

Chairman CARPER. And each agency, CIA and others, were doing their own inventory. Is that correct?

Mr. DINAPOLI. They do.

Chairman CARPER. OK. And do they do it annually? Biannually? How often?

Mr. DINAPOLI. Under the ICD 612——

Chairman CARPER. Under what?

Mr. DINAPOLI. The Intelligence Community Directive 612, which was issued back in 2009, they are required annually to submit an inventory.

Chairman CARPER. And they have been doing that since when?

Mr. DINAPOLI. Since fiscal year 2007. I think 2006 was a pilot program, and so this is probably the seventh or eighth inventory that they have submitted most recently. We looked at it probably in the sixth or seventh iteration.

Chairman CARPER. OK. Again, going back to my question, what did you find out?

Mr. DINAPOLI. The inventory was not good. It has significant limitations as a tool for decisionmakers. At least in our view, that when you talked about the numbers and costs associated with contractors that was provided in statutorily required reports, such as the Personnel Level Assessments and the briefings that they provide to you and Congress and to other committees, the information just was not accurate, and so we need to be cautious about using that information as the basis for providing Congress information so you all can provide oversight.

Chairman CARPER. Good. Well, my time is about up, and I am going to yield to Dr. Coburn. Let me just say, when I come back one of the things I want to do is ask about the recommendations you have made and Ms. O'Sullivan's response to those recommendations.

Dr. Coburn, when I rode home on the train last night and I read all this material—I know you read this stuff, too—I said earlier I was about ready to go to sleep. I am wide awake right now, so thank you. Dr. Coburn.

Senator COBURN. Well, thank you all for being here. I do not know where to go with this. Deputy Director O'Sullivan, basically your testimony tells me you want to use this data, but it is difficult to get it exactly right, and because of that difficulty, you are going to use limited data. And GAO is testifying that the data has some big holes in it, and you are testifying that you have dropped core contracting down a significant amount. If you have data that has big holes in it, how do you know you did it right?

Ms. O'SULLIVAN. The first thing is that the utility of the contractor inventory is not only in the end results but in the process. So by forcing every manager across the IC to address how are you using core contractors to sit down and then justify their numbers as they work through to be able to talk about year to year what are those changes and justify any changes and to ask themselves how am I using these contractor functions is incredibly valuable.

I can tell you that what happened across the IC is that you had people reexamining: Do I really need to have this function covered by contractors?

We then, by setting goals year to year, year-to-year reduction goals—because we had to manage this responsibly and get the mission done at the same time. What we were doing was driving each component to look at can I cut this by 5 percent, and then we would calibrate again. And, again, it was relative to the previous year. And then we would see, OK, the mission moved forward. Looking at the metrics, it looks like we have still got some room, let us move down another 5 percent.

And by doing that, we managed the transition from a surge in contractors to a buildup in government staff much more effectively than we did in the previous decade.

Senator COBURN. So how do you explain that in 81 out of 102 records in their sample they did not find unique expertise, find the evidence in the statements of work or other contract documents that the functions performed by the contractors required expertise not otherwise available from U.S. Government employees? That is 80 percent.

Ms. O'SULLIVAN. We did not require them to maintain the data in support of this that——

Senator COBURN. Well, why not?

Ms. O'SULLIVAN. Because we were using it as a management process tool to force the discussion and engagement.

Senator COBURN. But here is the real question: 81 percent in the sample—that does not mean all of it. That does not mean you can apply it across the board. But of the sample they looked at, you do not have a written justification or a reason for using the outside core contractor for those—at least you cannot document it. That does not mean it is not there.

I am a big believer in continuous process improvement and lean manufacturing, and data is important. And your statement was that it is so difficult to get the data because of all the other agencies. I am reminded of what Edward R. Murrow said: "Difficulty is never recognized in history as an excuse." And the fact is you cannot make great management decisions unless you have accurate data. And we have the testimony of GAO that says you do not have accurate data.

I sit on the Intelligence Committee. I love you guys. All right? I love what you do. I love how you sacrifice. I love the things that you are doing to help protect this country. But to me I think this is a pretty damning report for the quality of management and the quality of the—I think the decisions can be suspect based on what the GAO is showing us. So please defend that for me.

Ms. O'SULLIVAN. I believe our reality is that, as our goal was set out, we have reduced our core contractor numbers. Our overall contract costs are down. That is an auditable number. And when we look at the overall budget, when we look at the numbers of people we have in our buildings, all of our indicators track with this. But this was the leading tool that forced people to get involved in the discussion.

Senator COBURN. OK. I guess the other question is: Do you in your management position expect to take these recommendations from the GAO to get better and actually accurate data so that your decisions will be made in a more fruitful way? I do not deny that you have reduced core contractors. But we went like this on core contractors in the IC. So the success of reducing a third of them when they are talking about 80 percent not having the background in terms of demonstrating a true need versus core-competent Federal employees who are going to be with us and bring with that the experience and the judgment and the long-term view of here is what has happened in the past, here is where we are today, and the thinking that goes with that. Where are you going forward based on this report?

Ms. O'SULLIVAN. We absolutely agree in trying to continue to improve the tool that we have, and the GAO recommendations have been incorporated in our inventory this year.

Senator COBURN. So you are going to ask for better metrics, because your budget request is based on those, right? And if the metrics are not any good, your budget request is not any good.

Ms. O'SULLIVAN. We have worked every year to improve the quality of the data and to continue the conversation, and we absolutely agree with your statement that the transition to the foundation of our workforce is the government workforce. And I believe that the right thing that the community leaders did was knowing from the very beginning that we were doing the surge and trying to keep the mission going. They never lost sight of the need to manage the transition. And they started that before we started having budget-driven cuts that would force that.

So we were 2 or 3 years in advance starting to prepare and manage the transition down, and I think that that is what allowed us to do this without breaks in mission.

Senator COBURN. OK. You would agree with the statement on true government function.

Ms. O'SULLIVAN. Absolutely.

Senator COBURN. We get better return on our dollars using Federal employees than we do when we are using contractors.

Ms. O'SULLIVAN. Absolutely.

Senator COBURN. All right.

Ms. O'SULLIVAN. And every one of my reports and every agency, the thing they ask for, 90 percent of the requests I get are for government staff.

Senator COBURN. OK.

Ms. O'SULLIVAN. Not more dollars for contractors.

Senator COBURN. All right. Thank you.

Thank you, Mr. Chairman.

Chairman CARPER. You are welcome.

Senator Tester, you are up next, and then Senator McCaskill, then Senator Ayotte. Please proceed.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thanks, Mr. Chairman.

Ms. O'Sullivan, I understand the IC leadership closely monitors the results of the annual IC Employee Climate Survey to track the satisfaction and inform retention. In April, I was able to chair a hearing that examined the Federal employee morale, productivity, and agency recruitment and retention efforts. Now, while I understand the IC was highly rated by the Partnership for Public Service, the IC has experienced some difficulties in recruiting and retention. As with all agencies, the IC has faced more than a few challenges hiring and retaining staff.

So could you walk us through some of the hiring and retention challenges that you have faced over the last several years, that the IC has faced?

Ms. O'SULLIVAN. The primary challenges that we face in our attrition is critical staff that—key skills that in industry are highly sought. Believe it or not, one of the most difficult skills to keep is contracting officers and contract lawyers. They are frequently re-

cruited about as fast, it feels like sometimes, as we can train them and bring them on board.

Another area is competition with the IT industry, key cyber skills, things like that. We also see the most attrition in the early years, right after you bring someone in, typically you think about the first 5 years you are really training them, getting them settled into the mission, fully understanding the environment. They get more productive after that timeframe. That is the attrition that we watch most closely, is losing those people in those first 5 years.

But, overall, the IC's attrition has bounced around between 4 and 5 percent, so it is relatively low.

Senator TESTER. How does that compare—that is relatively low?

Ms. O'SULLIVAN. Yes.

Senator TESTER. OK. What is the solution for the competition with IT, for example?

Ms. O'SULLIVAN. The solution, as it has been throughout our history, is mission. People join this workforce because they want to do public service, particularly the young officers, and in many cases almost 60 percent of our workforce or more—I have not checked it recently—is new since September 11, 2001. They came on board with a service motto, and they are tied to getting the mission accomplished.

So what we try to do is always keep that in front of them and keep them tied to the idea that the work that they are doing every day makes a difference.

Senator TESTER. OK. According to this GAO report, the eight civilian IC elements have not fully developed policies to address risks associated with contractors supporting inherently governmental functions, in certain cases, in terms of contractors to perform certain intelligence analysis work in very close alignment with Federal employees side by side. In this regard, according to Mr. DiNapoli's testimony, the eight civilian Intelligence Community elements have generally not developed strategic workforce plans that address contractor use. Mitigating risk in this case is absolutely central to our national security. I think you agree with that.

If the Intelligence Community elements are allowing contractors to set policy or control its mission or operation, that is a problem. So why don't the IC elements have fully developed policies across agencies to address contractor risk? It appears to be a revolving door.

Ms. O'SULLIVAN. I can add a new data point. The ODNI, the office for which I am responsible, has issued a policy reaffirming the OFPP letter. So it is capturing the need to track critical and closely associated with inherently governmental function and contractor activities. And as was reported by the GAO report, they have since gotten indications from the other departments, a couple of other departments, that they are moving forward as well.

In addition, the contract procurement authorities across the IC are actively and vigorously engaged in a debate over how to incorporate the new Office of Personnel Management (OPM) definitions in critical functions and closely associated functions in our core contractor inventory. We are trying to figure out how the taxonomy works so that we do not have to rebuild and reargue the agreement on definitional baselines that we have gotten to.

They are also very engaged in trying to figure out how can we estimate and track these on our contracts, so they are looking at how to implement that in the contract proposals that we are doing in the future.

Senator TESTER. So is it fair to say that each IC element is going down their own track?

Ms. O'SULLIVAN. They all have to implement it themselves, but we are engaged in leading the discussion and trying to reach to a common baseline of how we will all implement the common guidance that we have——

Senator TESTER. So how many of the eight elements are following your path right now and have issued——

Ms. O'SULLIVAN. There are three that have issued policies per the discussion and at least two more that have agreed and are in process.

Senator TESTER. Three that have issued policies, three that are in process, and two that have not done much.

Ms. O'SULLIVAN. Two that are still working on it. They are pretty small elements.

Senator TESTER. OK. Who holds them accountable?

Ms. O'SULLIVAN. Well, we do. We have required that they address in our inventory their response to this—to what they are doing to implement it. So they must report what they are doing to implement this.

Senator TESTER. OK. According to the GAO report, it was discovered that the Intelligence Community has not been using the same criteria to evaluate who falls into the core contractor category across all of the eight component agencies. You all are appropriated a certain number of dollars each year, and that is how you do your budgeting for hiring and for contracting. Someone had to be keeping track of those numbers prior to 2009. Can you outline what measures the ODNI, CIA, and the IC elements have been taking to ensure that all agencies are on the same page in their classification of core contractors?

Ms. O'SULLIVAN. Classification according to function. The Intelligence Community Directive, that we issued in 2009 set a definition out for what a core contractor function was. The difficulty we had was not in everybody having a different definition, but in everybody reading those words and interpreting it slightly differently. And it was complicated by the fact that we have this enormous diversity of mission across the 17 IC elements. So what I mean as a language specialist is different than what the open source people mean or what the case officers or State Department folks mean.

So we had a lot of clarifications that we worked with as we did the inventory year on year where someone would say, "Well, I interpreted IT support this way," and somebody else would say, "Well, I interpreted it this way." And then we would issue guidance to clarify the definition. But the definition stayed fairly standard.

We are doing a new release of that directive right now to catch all of these accumulated clarifications and try once more to get everybody to interpret the language the same way. But I would say that within each agency, a lot of the inconsistencies we see are across the elements. Within each agency, there was more of a consistent approach individually. It was just adding them up across

the IC and you would see different ways of counting and interpreting the data.

Senator TESTER. OK. Thank you very much. Thank you both.

Chairman CARPER. Thank you, Senator Tester. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you.

I think you know, Ms. O'Sullivan, that there is a little bit of a crisis of confidence within Congress about the Intelligence Community, writ large, and the conflict that has been laid bare by a very brave and appropriate speech given by Dianne Feinstein on the floor of the Senate about the serious policy disagreements with the CIA which was being subjected to Congressional oversight. I think this has made it incumbent on the Intelligence Community to be as transparent as possible with Congress while protecting the classification of information that is important for our national security.

In that regard, I am curious as to why the number of contractors and the cost of contracts has been classified.

Ms. O'SULLIVAN. In many cases our relationship with specific contractors is classified or sensitive at their request, so we——

Senator MCCASKILL. I am not saying that you name them. I am talking about how many there are and how much it costs.

Ms. O'SULLIVAN. I would be glad to take that on and look at giving you an update of——

Senator MCCASKILL. I think it is classified because you get away with saying things are classified in the Intelligence Community. I mean, here is the interesting thing: I do not think it helps the enemy to know the ratio of Federal employees to contractors. I do not think that is a problem for our Intelligence Community in terms of jeopardizing our national security. And what is really interesting is we are paying Booz Allen Hamilton for administrative support services, but we cannot even talk about how much we are paying them or how many there are, even though they have it on their website.

They talk about doing work for the Intelligence Community on their website.

So I just think there is a time where there needs to be a little bit of a gut check in the Intelligence Community because I think that—when you have somebody like Senator Feinstein who is—she is a work horse, not a show horse. She is someone who understands the sensitive nature of the responsibilities she has as Chairman of the Intelligence Committee. When she rips into our Intelligence Community in a public way, you have a problem. And I think everything you can do to show that you accept oversight of Congress is really important, including not classifying stuff that, frankly, should not be classified, especially when the people whose identities you are supposedly wanting to protect are advertising it on their websites.

So I would appreciate some kind of specific answer as to why the ratio of contractors to Federal employees and the costs of those contractors would be considered classified information.

Ms. O'SULLIVAN. We will, of course, give you a more detailed answer. The usual calculus is that if you have a total number and a

number of people declare their part, you start subtracting, and you get what is left, and that is the people in relationships that need to be protected and want to be protected. But you deserve an answer, and we will get you a detailed one, because we are committed to engagement. I personally spent a great deal of my time reading intelligence from around the world, and I know just what a society that does not have oversight looks like. It is incredibly valuable. It is the thing that allows us to do that which we must do in secret in an open society. There is no other way to make it work.

So we are committed to that. Director Clapper has been leaning forward and pushing transparency initiatives. We have released thousands of pages of documents which, as you know, is countercultural. And it has required an intense reexamination, and we are continuing to push that across the Intelligence Community.

Senator MCCASKILL. I think that is terrific, and I want to be very encouraging in that regard, because I do think if there is a sense that we cannot conduct oversight, then we begin to have the unraveling of the very foundation of the Intelligence Community that is necessary for the protection of our country.

Ms. O'SULLIVAN. We cannot function without adequate and trusted oversight.

Senator MCCASKILL. Does ODNI have access to the analysis that has been done at the element level on cost-benefit for country employees versus Federal employees?

Ms. O'SULLIVAN. I believe we do have access to that data, yes.

Senator MCCASKILL. And do you feel confident that those kinds of cost-benefits analyses have actually occurred?

Ms. O'SULLIVAN. I do, especially given the preference that almost every manager I know has for government employees as their base. The drivers that we have had with the number of budget reductions that have been going on through the past 3 years—we are now going into our fourth-year cycle of down budget calculations. Everyone looks first to see if we can squeeze efficiencies here before we touch the key delivering on mission, take risks that would, frankly, cause us to lose sleep at night, or that would cause us to cut into that core foundational workforce.

Senator MCCASKILL. Senators Tester, Mikulski, Coats, Collins, and I have introduced legislation to make the National Security Agency (NSA) Inspector General (IG) a Presidentially appointed, Senate-confirmed position. As you know, the current NSA IG is appointed by and reports to the NSA Director.

Do you agree that a Presidentially appointed, Senate-confirmed IG at NSA might be seen as more independent and more receptive to complaints of alleged abuse at the agencies?

Ms. O'SULLIVAN. I believe that that is the way that most folks in Congress see it, and I have spent my career working under Presidentially appointed IGs, and with, and they have been incredibly valuable contributors to our joint enterprise because they allow me to look at and see things that I might have missed otherwise.

Senator MCCASKILL. Do you have an opinion? And if you do not, if you could take this for the record, I would like some kind of weighing in by the administration about expanding our whistleblower protections to contractors within the Intelligence Community.

Ms. O'SULLIVAN. We will take that for the record.[1]

Senator MCCASKILL. It is a little tricky. I get that, but, I have worked a lot in this space with DOD. When you have employees—and we have this at DOD, we have it at DHS, and we have it in the Intelligence Community—when you have a row of carrels and you have contractor, Federal employee, contractor, contractor, Federal employee, Federal employee, contractor, and they are all doing the same work, there is no reason why the ones that are contractors should not have the identical whistleblower protection as their colleagues that they are working shoulder-to-shoulder with. And I think it is very important to have whistleblower protections for everyone who is working on behalf of the Federal Government, and I would like some kind of weigh-in from the administration about their support for that concept.

Ms. O'SULLIVAN. I would note that they all have very active redress to those very independent IGs. Many of the employees that the IGs deal with are contractor complaints.

Senator MCCASKILL. Well, the problem is that if you have a complaint and you are going to go to an IG that is hired by, and in a sense works for, the head of the agency, I do not think that gives a whistleblower much confidence, especially if they are working for a contractor and they do not have the specific protections that Federal employees have.

Ms. O'SULLIVAN. Perhaps my experience reflects the fact that I have worked under Presidentially appointed IGs.

Senator MCCASKILL. Probably.

Thank you, Mr. Chairman.

Chairman CARPER. Thank you.

Senator Ayotte, before you are recognized, Dr. Coburn wanted to say something.

Senator COBURN. Yes, I just want to say something. there is no committee in Congress that does more oversight than the Intelligence Committee. Twice a week, 2 hours each time, at a minimum, the IC is oversighted. We will have a lot of questions in a closed hearing that you can get answers to.

The other thing that I would point out, the reason there was no rebuttal to what Senator Feinstein said is that under the rules of the Committee we cannot. So you might think about that, why there was no rebuttal, and look at the rules of the Committee, and you might find a problem.

Senator MCCASKILL. Well, I am confused. So somebody can give a speech and disagree with her on the floor of the Senate?

Senator COBURN. It is about disclosing information that is Committee sensitive or classified.

Senator MCCASKILL. So do you believe, Senator Coburn, that she disclosed information that she should not have disclosed?

Senator COBURN. I did not say that. I just said we cannot rebut that without violating the rules of the Committee.

Chairman CARPER. All right. Senator Ayotte.

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[1] Information submitted by Ms. O'Sullivan for the record appears in the Appendix on page 58.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you. I wanted to ask about a concern I know this Committee has dealt with on a number of occasions, which is the insider threat issue to national security, workforce safety issues, and obviously this is a threat that we could face not only from contractors but from Federal employees themselves. However, it has turned out that some of our most recent and damaging breaches to national security and workforce safety have come at the hands of contractors, whether it is Edward Snowden or Aaron Alexis, both who we were working in a contractor capacity, I know not within the civilian intelligence agencies, but I think obviously with the sensitive nature of the information that you are dealing with, those threats are just as important and great given the importance of our Intelligence Community of protecting our country.

So when we are speaking about IC accountability for hiring contractors and knowing what function they are performing and whether, obviously, they are performing inherently governmental functions, that is an important question. But I also think it also deals with a larger IC accountability issue, and including knowing who we are hiring, mitigating risk, and assuring continuous evaluation and accountability.

So I would like to hear your thoughts on how we are addressing this issue, how we are mitigating the risks of contractors as insider threats, and what you believe is being done in that regard to ensure the American people that we will not see similar instances as we have seen outside your agencies.

Ms. O'SULLIVAN. First, regrettably, there is no corner on the market for people who would cause threats. Historically, Government employees have been an equal risk there. But in managing the contractor workforce, as I said earlier, they go through the same security vetting process as our Government staff. In addition, the contractor must—before they have any access, they must have this validated need, and they must have a validated clearance. In addition, they are subject to the same regulations and monitoring once they are in our systems as Government staff.

So what we have been doing, as you pointed out, is enhancing the security process for all, and that includes the continuous evaluation process, which we are driving to bring on board working with OPM.

Senator AYOTTE. So what are you doing now in terms of continuous evaluation? And what do you anticipate doing as an improvement to that process?

Ms. O'SULLIVAN. We are building off of a pilot project that I think you have probably heard about that the army did, which pointed to the benefits of continuous evaluation. We are looking for an initial operational capability (IOC) at the end of this year, and 5 percent of our Top Secret/Sensitive Compartmented Information (TS/SCI) employees cleared covered by continuous evaluation looks going into 2016.

Senator AYOTTE. And right now what is the period that someone has to—can you remind me of that—how often are you evaluating your employees right now?

Ms. O'SULLIVAN. For TS/SCI, predominantly we are looking at a 5-year periodic reinvestigation. But we did have some challenges with people facing budget cuts and sequestration, looking at moving funds from that and focusing on initial investigations. The DNI sent out a letter in October telling people to do a risk-based approach to the reinvestigation so that we make sure that those at highest risk or who have the most sensitive access are investigated more frequently.

Senator AYOTTE. Are you doing any random audits?

Ms. O'SULLIVAN. We are doing random audits of our employees on our IT systems.

Senator AYOTTE. On the IT systems?

Ms. O'SULLIVAN. Yes.

Senator AYOTTE. So Senator Collins, Senator Heitkamp, and I have been really having a piece of legislation that deals with more random audits of the background review, and it seems to me—I appreciate that you are doing it of the IT system, but obviously the risks outside of IT are just as important in terms of the sensitive nature in which some of the issues that you are dealing with in the Intelligence Community. So that is one of the things I hope we will get to because, frankly, if you do not know when you might be evaluated, I think that is a better system than knowing that, every certain period you are going to be evaluated.

So I just appreciate what you are doing on that, and obviously this is an issue we face across government, so thank you. That is all I had for questions.

Ms. O'SULLIVAN. Thank you.

Chairman CARPER. Thanks so much for joining us today.

I want to go back to—I told you that when I finished my questioning, I was going to go back and ask you some questions about recommendations and how those recommendations were received and acted upon.

Let me just ask you, let me go back in time to 2012. Senator Akaka was about to leave us. He makes this request for a GAO study, and you all go to work on it. It takes over a year. You come out with your report this year. And just talk a little bit about the back-and-forth between, I do not know, the two of you, if there is some—I presume there is—but in terms of the development of the recommendations, how does that take place between GAO and in this case ODNI?

Mr. DINAPOLI. Well, thank you, Senator, for the question. I think when you look historically back at the start of this engagement, that was just after the Intelligence Community Directive 114 was established, which provided a framework for GAO to move forward with the Intelligence Community in terms of audits. And with that new Intelligence Community Directive, I think that did establish a good framework for us to move forward. It gave us an approach for a presumption of cooperation. It prevented the categorical denial of information, and access to much of the information on a more formal basis.

This job, as you said, started some time ago, and it continued for about probably a year's worth of dedicated audit work and then some additional work as to followup. I think the information and the cooperation that we got from the Intelligence Community im-

proved over time. I think that initial period, there were some efforts to try to understand how to implement the directive. And I think as we came back and walked through each of the agencies with our findings about what we found in looking at the inventory, gave them the opportunity to see what we had done, and then we were discussing with them what we thought some of the implications were. So I think at least at the element level we had a good dialogue toward the end about the work that we had done, how we had completed it, and what some of those implications are. And I think our recommendations derive directly from those discussions.

I think when we sent the report over for formal comments, we had a very good exit conference, which is the standard process that we use at the Office of the Director of National Intelligence——

Chairman CARPER. Who participates in that kind of exit conference?

Mr. DINAPOLI. I think in that particular case it would have been the office most directly cognizant for the work, the Chief Human Capital Officer, with support from the acquisition individuals, were there at the exit conference along with agency representatives. It depends upon who actually shows up.

So when we present that information, we talk about here is the potential recommendations, we are looking for the agencies to help us out, because we do want the recommendations to be actionable, we want them to be productive, and we want them to do something that, once they are implemented, they are just not implemented because they think they just will be done with GAO; it is that we have some type of positive action that allows the agencies to move forward. Because it is not about us, it is about the agencies having the ability to improve whatever they are doing.

One of the questions I think you mentioned before is, well, what do you think about how responsive the Office of the Director of National Intelligence and the agencies have been? We thought the responses to the draft report and the recommendations were solid. I actually thought that the Director provided cogent responses saying here are some specific steps we are going to take with regard to improving information on the methodology; we are going to ask for that information so we will have a better handle on it.

They had general agreement, at least in principle, with how to improve workforce planning, but they pointed out that it is not a simple task. There are some things that they need to think about how to implement it in a way that makes sense for us and is not overly burdensome, not too cost prohibitive.

We agree with that in general, that you do need to make those actions usable, cost-effective, and meaningful. So we are going to continue to work with the agencies to figure out what they are doing and make sure that the actions that they take are responsive, and we will listen to their concerns about if we do it this way, this might be too much.

Chairman CARPER. OK. Ms. O'Sullivan, just chime in here. How does the process work for you? It seems to me if I were at GAO and I were doing this, I would want to have you fully involved. I would not want it to be necessarily adversarial, but to see if we can collaborate, and at the end of the day when we come up with recommendations, hopefully they are better informed recommenda-

tions and you would be more likely to comply with them. But just from your perspective, how does this work?

Ms. O'SULLIVAN. It starts with engagement at the front end to understand what is the scope of the work that is going to be done, and I actually like to work before that by suggesting here are some areas where I could use some outside eyes. These are lessons, again, I have learned from the relationships with IGs through the years that the only way to really approach this—and this is what I tell my management organization—is by looking at this as an opportunity to see that which you are missing. It is that old adage of when you are in college and you typed a term paper, you could read that paper 50 times and read right over the typo every time. You just simply cannot see that which is the norm to you. You need outside eyes to help you find problems, and that is about the basic credo of IGs and GAO, is to make the function of government more efficient and effective.

So it should be looked at as an opportunity to improve, and the engagement at the front end is to try and figure out how to understand in our working environment—for instance, one of the things that we are engaged on now is suggesting maybe you could take a look at our facilities footprint across the Washington area to see that we are really getting the gains in shared space that we think we are. This is the kind of ongoing debate, and I do this with our IGs all the time. I ask them, I have a new component director here, why don't you establish a baseline before the new guy comes in? And that is the way to engage in a fruitful relationship.

Chairman CARPER. OK. I am going to come back and ask you to walk us through some of the recommendations, and then I am going to ask—not yet, but after Dr. Coburn goes, and then, Ms. O'Sullivan, I will be interested in your reaction to those recommendations and how we are doing.

Then one last question before I finish up I will be asking you is what do we need to do next on this end, on this side of the dais, in order to kind of make sure this is all going to work out. Dr. Coburn.

Senator COBURN. I am going to defer my questions. I have some other questions, but I am going to defer them for a closed hearing because there are some questions I want to ask in a closed hearing.

Chairman CARPER. Well, let us just do it. Let us jump into the recommendations, just some of the key recommendations you have made, and let us get some reaction how we are doing.

Mr. DINAPOLI. So we did make a number of recommendations. The first two are directed at the Office of the Director of National Intelligence and the Chief Human Capital Officer. Both have to do with improving the basic workings of the inventory.

The first one, we said we had to develop more internal controls, so how do we improve——

Chairman CARPER. Had to develop what?

Mr. DINAPOLI. Internal controls. How do we get the data just to be better? And the second part was how do you improve some of the estimating methodologies to get more consistencies with regard to what is reported. In that regard, the Chief Human Capital Officer concurred and said we are going to do that, and we are going to take some specific steps. So in this year's inventory, which I be-

lieve would be the fiscal year 2015 Intelligence Community inventory, they are going to have a particular tab, a specific tab that says how did you estimate, what was your methodology, what kind of limitations or challenges did you find. That information I think is also supposed to be reflected in the briefings up to the Hill, whether it be the annual briefings they provide to the committees or in the personnel level assessments, so there should be more clarity about what the information is and what it can be used for and what it should not be used for. Those two things I think would be very positive steps by the Intelligence Community.

We also made a number of recommendations to the heads of the agencies that did not fully implement the Office of Federal Procurement Policy's guidance.

Chairman CARPER. I am sorry. Say that again? Start that sentence over again.

Mr. DINAPOLI. Sure. During the course of the review, we looked at the policies in place to mitigate the risks associated with using contractors, and specifically did the agencies implement procedures to implement the Office of Federal Procurement Policy's September 2011 guidance. In our review, only the Departments of Homeland Security and State had done so.

Chairman CARPER. OK.

Mr. DINAPOLI. So we had five other agencies that had not. We said, you need to get those policies in place, which is a recommendation that we had previously made to the Office of Federal Procurement Policy back in 2011.

Chairman CARPER. And what has happened subsequent to that recommendation?

Mr. DINAPOLI. A couple things. Since that point in time, Justice concurred with that recommendation. We are going to work with them to see what actions they are taking. I think Treasury also concurred, and the interesting part about Treasury is that they needed to do a pilot program because they said this is a pretty fundamental change in how we are thinking about using contractors. And as part of the briefing they provided to us, they said we are going to implement changes probably in September. But they did find that when they were looking at their workforce balance, they did find a number of individuals that were paid considerably more than what they thought was cost-effective. And so as part of that rebalancing scheme, you might actually have some ability to have cost savings. So I think there is a positive use of the inventory.

A couple other agencies, we are still in dialogue with them as far as what actions they are taking. The Central Intelligence Agency is one of the outstanding ones that we still need to followup and close the loop on.

Chairman CARPER. Ms. O'Sullivan, jump in, please.

Ms. O'SULLIVAN. I think he has accurately captured the fact that we responded to the first recommendations by including concrete direction in our inventory this year where we asked elements to identify the methodology used and steps taken to address increasing accuracy of the data.

In addition, as I mentioned earlier, in ODNI, the element I oversee, we have moved forward and initiated policy as requested addressing the OFPP letter. So those are concrete steps taken, and

I would also like to point out the benefit he just highlighted in the discussion with Treasury is what I meant by the process of going through this examination forces out things that you should be looking at. When Treasury looked at their core contractors, because of this inventory, because of GAO's involvement, they started asking themselves some questions about is the rate of pay for a contractor the right thing. It is not a direct intent of the inventory. It is the byproduct that you get by examining these things closely.

Senator COBURN. Did you do anything in terms of increasing the justification on outside contracting?

Ms. O'SULLIVAN. Our contract officers work that constantly in the contract stuff, and they take that on board to look at their own audited numbers and see if there is something that we can issue as far as direction in our——

Senator COBURN. So new outside contracting has to have the justification there?

Ms. O'SULLIVAN. There are requirements in the basic contracting structure.

Senator COBURN. But there always have been.

Ms. O'SULLIVAN. Yes, so this is——

Senator COBURN. You were not following them.

Ms. O'SULLIVAN. This is a check to go and look at and see was this an anomaly or is this something we need to look at across the board.

Senator COBURN. OK.

Chairman CARPER. Great. Well, I think we are going to wrap up here and go to a secure setting for a few more questions. Before we do, talk to Dr. Coburn and me about what we can do from our end to be helpful in making sure that this is not gathering dust, but just to make sure there is actually good followup and continue to be good followup. What can we do to be helpful?

Mr. DINAPOLI. Well, I actually think there are two things that you could do. I think the Committee historically has done a lot of work in this area, and they have held hearings. I refer back to the hearing that the Committee held back in 2007 which I think prompted DHS to do more with its contractors. That type of oversight I think is essential and promotes that type of reassessment internally by the agencies. So continuing to hold the oversight hearings that the Committee is holding I think would be one of the key things to do.

I think the second thing that the Committee could help spur is a dialogue within the Federal community now that we have had a number of years' use, looking at the DOD inventory of contractor service, the civilian inventories, and then the IC inventory, there are undoubtedly best practices and lessons learned in how we can use the inventory better. And I think that requires not just an individual agency or element. I think it needs more of a concerted Federal-wide dialogue, potentially led by the Office of Federal Procurement Policy, but definitely in conjunction with the units that come together, like the Chief Financial Officers (CFOs), you need the Chief Acquisition Officers (CAOs). You need the folks that are going to have their community represented so they need to be part of that dialogue to say how can we make this work for us within the environment that we work in.

So I think there is a great opportunity to set the stage now because, as we get data on contractor performance, as we get data on the number of contractors, if we lay the foundation now, 2 to 3 years from now we will be in a position to actually make some more very informed governmentwide processes that will make it more applicable and more useful across the government.

Chairman CARPER. OK. Ms. O'Sullivan, just wrap it up very briefly. Same question.

Ms. O'SULLIVAN. Very briefly, anytime you have a concern, the sooner you come to us or send us a request, have your staff reach out, the better it is for all of us. I do not want you to feel a lack of confidence because you have not gotten an answer you were looking for.

Chairman CARPER. All right. Thank you.

With that, we are going to call it a day here, at least in our open hearing. The hearing record will remain open for 15 days, until July 3 at 5 p.m.—for the submission of statements and questions for the record.

The hearing will be in recess subject to the call of the Chair, and we are going to reconvene shortly in a classified setting. Thank you again for joining us for this portion of the hearing. We will look forward to meeting again with you very shortly.[1]

Thanks, everyone.

[Whereupon, at 11:16 a.m., the Committee proceeded in Closed Session.]

[1] The transcript of the classified session of the hearing is on file at the Office of Senate Security, document number OSS–2014–0961.

APPENDIX

Opening Statement of Chairman Thomas R. Carper
"The Intelligence Community: Keeping Watch Over Its Contractor Workforce"
June 18, 2014

As prepared for delivery:

The committee will come to order. My colleagues and I today will be examining some of the challenges agencies have in managing the large contractor workforce we rely on to do some of the most sensitive and important work the federal government does. It's essential that the leadership of any organization should have good visibility over its workforce. They need to know who makes it up, what skills they have, what skills they lack, and what they do day in and day out. Nowhere is this more important than with the federal agencies in charge of protecting our nation and our nation's sensitive information.

The men and women who work at our nation's intelligence agencies are entrusted with obtaining, analyzing and protecting our most sensitive information. The people we entrust with leadership roles at these agencies need to be able to show the American people, and Congress, that they know who is working for them, and why. Contractors in the intelligence community perform key functions at the heart of intelligence collection, management and analysis. They work side by side with federal employees and are given access to our most sensitive information. This extensive reliance on contractors raises a number of risks:

First and foremost, an agency that turns over too much responsibility to contractors runs the risk of hollowing itself out and creating a weaker organization. The agency could also lose control over activities and decisions that should lie with the government, not with contractors. Second, the use of contractors for mission-critical work creates an additional layer of management between the contractor employees and the government. Adding layers makes it more difficult to conduct oversight and assign accountability. And third, when agencies turn to contractors as a "default" option without careful analysis, they run the risk of paying more to get work done than they would have paid if they had just relied on federal employees.

While the precise number of employees at each intelligence agency is classified, it is no secret that following 9/11, the intelligence community ramped up its workforce, including its use of contractors. In response to concerns that the intelligence community had become too reliant on contractors, the Office of the Director of National Intelligence began in 2006 to conduct an annual inventory of contractors performing "core" functions at the heart of intelligence operations. The goal of this inventory is to provide a snapshot of the size of the intelligence contractor workforce, its costs, the functions it performs, and the reasons cited by agencies for using the contractors.

This hearing will focus on a Government Accountability Office (GAO) report requested by our former colleague, Senator Daniel Akaka, with support from myself and Senators Coburn, Collins, McCaskill and Johnson. We asked GAO to look closely at the annual inventory of core contractors and find out how well it's really working in helping agencies better know and manage their workforce.

GAO's findings reveal that the numbers in the inventory simply aren't reliable and that the intelligence agencies do not have the kind of information they need to assess the cost benefit of using contractors, to conduct strategic workforce planning, and to determine the role contractors should play in their organizations. In other words, we

don't have the full picture of who is working for the intelligence community as contractors, or why.

While the GAO's report shows a number of problems, I like to say that in adversity, lies opportunity. If the intelligence community can get past its initial learning curve in conducting these inventories, it will have what is potentially a very useful tool that can be used to help make better decisions about its entire workforce. These inventories could help the Office of the Director of National Intelligence and the individual intelligence agencies identify where their critical skill gaps are. The inventories could also help identify where the government is paying too much for contractors, or where agencies could save money through strategic sourcing.

I look forward to hearing from the witnesses today about the progress the Office of the Director of National Intelligence and the intelligence agencies have made in responding to GAO's findings and recommendations. And I note that the intelligence community has been ahead of the rest of the government in creating an inventory of contractors whose work raises special risks. So there are a lot of good lessons we will learn today that the rest of the government can use.

I welcome our witnesses and look forward to their testimony. I'll now turn to Dr. Coburn for any comments he would like to make.

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Opening Statement of Senator Tom Coburn

The Intelligence Community: Keeping Watch Over Its Contractor Workforce

June 18, 2014

Thank you, Chairman Carper, for holding this hearing today, and thanks to our witnesses for being here to talk about the intelligence community's efforts to better manage and oversee its contractors.

The purpose of today's hearing can be captured by one fundamental principle. Good management decisions require getting good data to measure what we're doing, and to know where and how to improve. Without knowing how our resources are currently being used, we lack the ability to make informed decisions about how to plan for the future. And in planning for the future, the intelligence community, like other federal agencies, faces three challenges:

First, the intelligence community became overly reliant on contractors to carry out its mission in the years after 9/11, and now needs to re-balance to make sure that it has the right people in place to meet its mission. Second, the intelligence community needs to improve its own oversight and make sure it can manage the risks of using contractors who work side by side with government employees tasked with protecting our national security. Third, the intelligence community needs to be able to provide Congress with the data and information we need to perform our own oversight. The core contractor inventory is one tool, among others, that the intelligence community can use to help address these challenges.

However, as we will learn today from the GAO, the intelligence community suffers from the same problems as other agencies when it comes to getting reliable data on its contracted workforce. The value of a contractor inventory isn't just about doing a head count. There is no "magic number" of contractors that any agency should have, although there is no question that across our government today, we have too many.

The value of doing an inventory is that when it's done properly, it helps to provide a full accounting of what's going on. It helps you know who you have, what they're doing, and whether you are getting the best value for the American taxpayer.

GAO's report raises a number of questions on the reliability and accuracy of the data we have available today through the core contractor inventory. I look forward to discussing those concerns in detail, and to making sure that we are doing what we need to do to help support the efforts of the agencies we entrust with protecting us continue to improve in this area.

Statement for the Record

Stephanie O'Sullivan
Principal Deputy Director of National Intelligence

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 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 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 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 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.

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.

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.

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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United States Government Accountability Office

Testimony
Before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 10:00 a.m. ET
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CIVILIAN INTELLIGENCE COMMUNITY

Additional Actions Needed to Improve Reporting on and Planning for the Use of Contract Personnel

Statement of Timothy J. DiNapoli, Director
Acquisition and Sourcing Management

GAO-14-692T

GAO Highlights

Highlights of GAO-14-692T, a testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate

June 18, 2014

CIVILIAN INTELLIGENCE COMMUNITY

Additional Actions Needed to Improve Reporting on and Planning for the Use of Contract Personnel

Why GAO Did This Study

The IC uses core contract personnel to augment its workforce. These contractors typically work alongside government personnel and perform staff-like work. Some core contract personnel require enhanced oversight because they perform services that could significantly influence the government's decision making.

In September 2013, GAO issued a classified report that addressed (1) the extent to which the eight civilian IC elements use core contract personnel, (2) the functions performed by these personnel and the reasons for their use, and (3) whether the elements developed policies and strategically planned for their use. GAO reviewed and assessed the reliability of the elements' core contract personnel inventory data for fiscal years 2010 and 2011, including reviewing a nongeneralizable sample of 287 contract records. GAO also reviewed agency acquisition policies and workforce plans and interviewed agency officials. In January 2014, GAO issued an unclassified version of the September 2013 report, GAO-14-204. This statement is based on the information in the unclassified GAO report.

What GAO Recommends

In the January 2014 report, GAO recommended that IC CHCO take several actions to improve the inventory data's reliability, revise strategic workforce planning guidance, and develop ways to identify contracts for services that could affect the government's decision-making authority. IC CHCO generally agreed with GAO's recommendations.

View GAO-14-692T. For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov.

What GAO Found

Limitations in the intelligence community's (IC) inventory of contract personnel hinder the ability to determine the extent to which the eight civilian IC elements—the Central Intelligence Agency (CIA), Office of the Director of National Intelligence (ODNI), and six components within the Departments of Energy, Homeland Security, Justice, State, and the Treasury—use these personnel. The IC Chief Human Capital Officer (CHCO) conducts an annual inventory of core contract personnel that includes information on the number and costs of these personnel. However, GAO identified a number of limitations in the inventory that collectively limit the comparability, accuracy, and consistency of the information reported by the civilian IC elements as a whole. For example, changes to the definition of core contract personnel limit the comparability of the information over time. In addition, the civilian IC elements used various methods to calculate the number of contract personnel and did not maintain documentation to validate the number of personnel reported for 37 percent of the records GAO reviewed. GAO also found that the civilian IC elements either under- or over-reported the amount of contract obligations by more than 10 percent for approximately one-fifth of the records GAO reviewed. Further, IC CHCO did not fully disclose the effects of such limitations when reporting contract personnel and cost information to Congress, which limits its transparency and usefulness.

The civilian IC elements used core contract personnel to perform a range of functions, such as information technology and program management, and reported in the core contract personnel inventory on the reasons for using these personnel. However, limitations in the information on the number and cost of core contract personnel preclude the information on contractor functions from being used to determine the number of personnel and their costs associated with each function. Further, civilian IC elements reported in the inventory a number of reasons for using core contract personnel, such as the need for unique expertise, but GAO found that 40 percent of the contract records reviewed did not contain evidence to support the reasons reported.

Collectively, CIA, ODNI, and the departments responsible for developing policies to address risks related to contractors for the other six civilian IC elements have made limited progress in developing those policies, and the civilian IC elements have generally not developed strategic workforce plans that address contractor use. Only the Departments of Homeland Security and State have issued policies that generally address all of the Office of Federal Procurement Policy's requirements related to contracting for services that could affect the government's decision-making authority. In addition, IC CHCO requires the elements to conduct strategic workforce planning but does not require the elements to determine the appropriate mix of government and contract personnel. Further, the inventory does not provide insight into the functions performed by contractors, in particular those that could inappropriately influence the government's control over its decisions. Without complete and accurate information in the inventory on the extent to which contractors are performing specific functions, the elements may be missing an opportunity to leverage the inventory as a tool for conducting strategic workforce planning and for prioritizing contracts that may require increased management attention and oversight.

Chairman Carper, Ranking Member Coburn, and Members of the Committee:

I am pleased to be here today as you examine the use of contractors by the civilian intelligence community (IC). Like other federal agencies, the eight agencies or departmental offices that make up the civilian IC have long relied on contractors to support their missions.[1] For the purposes of this statement, I will refer to these agencies or departmental offices as the civilian IC elements. While the use of contractors can provide flexibility to meet immediate needs and obtain unique expertise, their use can also introduce risks for the government to consider and manage. In that regard, the IC has focused considerable attention on identifying and managing their use of "core contract personnel," who provide a range of direct technical, managerial, and administrative support functions to the IC. As part of its efforts, since fiscal year 2007, the IC Chief Human Capital Officer (IC CHCO) annually conducts an inventory of these personnel, including information on the number and costs of contractor personnel and the services they provide. These contractors typically work alongside government personnel, augment the workforce, and perform staff-like work. Core contract personnel perform the types of services that may also affect an element's decision-making authority. Without proper management and oversight, such services risk inappropriately influencing the government's control over and accountability for decisions that may be supported by contractors' work.

At the request of this committee, in September 2013, we issued a classified report that addressed (1) the extent to which the eight civilian IC elements rely on core contract personnel, (2) the functions performed by core contract personnel and the factors that contribute to their use, and (3) whether the civilian IC elements have developed policies and guidance and strategically planned for their use of contract personnel to mitigate related risks. In January 2014, we issued an unclassified version of that report that omits sensitive or classified information, such as the

[1]The eight agencies or departmental offices that make up the civilian IC are the Central Intelligence Agency (CIA), the Department of Energy's Office of Intelligence and Counterintelligence (DOE IN), Department of Homeland Security's Office of Intelligence and Analysis (DHS I&A), Department of State's Bureau of Intelligence and Research (State INR), Department of the Treasury's Office of Intelligence and Analysis (Treasury OIA), Drug Enforcement Administration's Office of National Security Intelligence (DEA NN), Federal Bureau of Investigation (FBI), and Office of the Director of National Intelligence (ODNI).

number and associated costs of core contract personnel.[2] My statement today is based on the information contained in the unclassified report.

To address these three issues, we reviewed and assessed the reliability of the eight civilian IC elements' core contract personnel inventory data for fiscal years 2010 and 2011, including reviewing a nongeneralizable sample of 287 contract records.[3] We originally planned to review fiscal years 2007 through 2011 inventory data. However, we could not conduct a reliability assessment of the data for fiscal years 2007 through 2009 due to a variety of factors. These factors include civilian IC element officials' stating that they could not locate records of certain years' submissions or that obtaining the relevant documentation would require an unreasonable amount of time. As a result, we generally focused our review on data from fiscal years 2010 and 2011. We also reviewed relevant IC CHCO guidance and documents and interviewed agency officials responsible for compiling and processing the data. We also reviewed agency acquisition policies and guidance, workforce planning documents, and strategic planning tools. We also interviewed human capital, procurement, or program officials at each civilian IC element. We compared the plans, guidance, and tools to Office of Management and Budget (OMB) guidance that address risks related to contracting for work closely supporting inherently governmental and critical functions, including Office of Federal Procurement Policy's (OFPP) September 2011 Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*; OMB's July 2009 Memorandum, *Managing the Multisector Workforce*; and OMB's November 2010 and December 2011 memoranda on service contract inventories. Further, we compared the civilian IC elements' efforts to strategic human capital best practices identified in our prior work.[4]

[2]GAO, *Civilian Intelligence Community: Additional Actions Needed to Improve Reporting on and Planning for the Use of Contract Personnel*, GAO-14-204 (Washington, D.C.: Jan. 29, 2014).

[3]Our sample was not generalizable as certain contract records were removed due to sensitivity concerns. The number of contract records we reviewed was a random sample of the contracts across all eight civilian IC elements and therefore cannot be used to determine the number of contracts for any individual civilian IC element or the civilian IC elements as a whole.

[4]GAO, *Human Capital: A Model of Strategic Human Capital Management*, GAO-02-373SP (Washington, D.C.: Mar. 15, 2002).

The work this statement is based on was performed in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our unclassified report provides further details on our scope and methodology.

Limitations in the Inventory Undermine Ability to Determine Extent of Civilian IC Elements' Reliance on Contractors

Limitations in the core contract personnel inventory hinder the ability to determine the extent to which the eight civilian IC elements used these personnel in 2010 and 2011 and to identify how this usage has changed over time. IC CHCO uses the inventory information in its statutorily-mandated annual personnel assessment to compare the current and projected number and costs of core contract personnel to the number and costs during the prior 5 years.[5] IC CHCO reported that the number of core contract personnel full-time equivalents (FTEs) and their associated costs declined by nearly one-third from fiscal year 2009 to fiscal year 2011. However, we found a number of limitations with the inventory, including changes to the definition of core contract personnel, the elements' use of inconsistent methodologies and a lack of documentation for calculating FTEs, and errors in reporting contract costs. On an individual basis, some of the limitations we identified may not raise significant concerns. When taken together, however, they undermine the utility of the information for determining and reporting on the extent to which the civilian IC elements use core contract personnel. Additionally, IC CHCO did not clearly explain the effect of the limitations when reporting the information to Congress.

We identified several issues that limit the comparability, accuracy, and consistency of the information reported by the civilian IC elements as a whole including:

- **Changes to the definition of core contract personnel.** To address concerns that IC elements were interpreting the definition of core contract personnel differently and to improve the consistency of the information in the inventory, IC CHCO worked with the elements to develop a standard definition that was formalized with the issuance of

[5]50 U.S.C. § 3098.

Intelligence Community Directive (ICD) 612 in October 2009. Further, IC CHCO formed the IC Core Contract Personnel Inventory Control Board, which has representatives from all of the IC elements, to provide a forum to resolve differences in the interpretation of IC CHCO's guidance for the inventory. As a result of the board's efforts, IC CHCO provided supplemental guidance in fiscal year 2010 to either include or exclude certain contract personnel, such as those performing administrative support, training support, and information technology services. While these changes were made to—and could improve—the inventory data, it is unclear the extent to which the definitional changes contributed to the reported decrease in the number of core contract personnel and their associated costs from year to year. For example, for fiscal year 2010, officials from one civilian IC element told us they stopped reporting information technology help desk contractors, which had been previously reported, to be consistent with IC CHCO's revised definition. One of these officials stated consequently that the element's reported reduction in core contract personnel between fiscal years 2009 and 2010 did not reflect an actual change in their use of core contract personnel, but rather a change in how core contract personnel were defined for the purposes of reporting to IC CHCO. However, IC CHCO included this civilian IC element's data when calculating the IC's overall reduction in number of core contract personnel between fiscal years 2009 and 2011 in its briefing to Congress and the personnel level assessment. IC CHCO explained in both documents that this civilian IC element's rebaselining had an effect on the element's reported number of contractor personnel for fiscal year 2010 but did not explain how this would limit the comparability of the number and costs of core contract personnel for both this civilian IC element and the IC as a whole.

- **Inconsistent methodologies for determining FTEs.** The eight civilian IC elements used significantly different methodologies when determining the number of FTEs. For example, some civilian IC elements estimated contract personnel FTEs using target labor hours while other civilian IC elements calculated the number of FTEs using the labor hours invoiced by the contractor. As a result, the reported numbers were not comparable across these elements. The IC CHCO core contract personnel inventory guidance for both fiscal years 2010 and 2011 did not specify appropriate methodologies for calculating FTEs, require IC elements to describe their methodologies, or require IC elements to disclose any associated limitations with their methodologies. Depending on the methodology used, an element could calculate a different number of FTEs for the same contract. For

example, for one contract we reviewed at a civilian IC element that reports FTEs based on actual labor hours invoiced by the contractor, the element reported 16 FTEs for the contract. For the same contract, however, a civilian IC element that uses estimated labor hours at the time of award would have calculated 27 FTEs. IC CHCO officials stated they had discussed standardizing the methodology for calculating the number of FTEs with the IC elements but identified challenges, such as identifying a standard labor-hour conversion factor for one FTE. IC CHCO guidance for fiscal year 2012 instructed elements to provide the total number of direct labor hours worked by the contract personnel to calculate the number of FTEs for each contract, as opposed to allowing for estimates, which could improve the consistency of the FTE information reported across the IC.

- **Lack of documentation for calculating FTEs.** Most of the civilian IC elements did not maintain readily available documentation of the information used to calculate the number of FTEs reported for a significant number of the records we reviewed. As a result, these elements could not easily replicate the process for calculating or validate the reliability of the information reported for these records. Federal internal control standards call for appropriate documentation to help ensure the reliability of the information reported.[6] For 37 percent of the 287 records we reviewed, however, we could not determine the reliability of the information reported.

- **Inaccurately determined contract costs.** We could not reliably determine the costs associated with core contract personnel, in part because our analysis identified numerous discrepancies between the amount of obligations reported by the civilian IC elements in the inventory and these elements' supporting documentation for the records we reviewed. For example, we found that the civilian IC elements either under- or over-reported the amount of contract obligations by more than 10 percent for approximately one-fifth of the 287 records we reviewed. Further, the IC elements could not provide complete documentation to validate the amount of reported obligations for another 17 percent of the records we reviewed. Civilian IC elements cited a number of factors that may account for the discrepancies, including the need to manually enter obligations for

[6]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

certain contracts or manually delete duplicate contracts. Officials from one civilian IC element noted that a new contract management system was used for reporting obligations in the fiscal year 2011 inventory, which offered greater detail and improved functionality for identifying obligations on their contracts; however, we still identified discrepancies in 18 percent of this element's reported obligations in fiscal year 2011 for the records in our sample.

In our January 2014 report, we recommended that IC CHCO clearly specify limitations, significant methodological changes, and their associated effects when reporting on the IC's use of core contract personnel. We also recommended that IC CHCO develop a plan to enhance internal controls for compiling the core contract personnel inventory. IC CHCO agreed with these recommendations and described steps it was taking to address them. Specifically, IC CHCO stated it will highlight all adjustments to the data over time and the implications of those adjustments in future briefings to Congress and OMB. In addition, IC CHCO stated it has added requirements for the IC elements to include the methodologies used to identify and determine the number of core contract personnel and their steps for ensuring the accuracy and completeness of the data.

Inventory Provides Limited Insight into Functions Performed by Contractors and Reasons for Their Use

The civilian IC elements have used core contract personnel to perform a range of functions, including human capital, information technology, program management, administration, collection and operations, and security services, among others. However, the aforementioned limitations we identified in the obligation and FTE data precluded us from using the information on contractor functions to determine the number of personnel and their costs associated with each function category. Further, the civilian IC elements could not provide documentation for 40 percent of the contracts we reviewed to support the reasons they cited for using core contract personnel.

As part of the core contract personnel inventory, IC CHCO collects information from the elements on contractor-performed functions using the primary contractor occupation and competency expertise data field. An IC CHCO official explained that this data field should reflect the tasks performed by the contract personnel. IC CHCO's guidance for this data field instructs the IC elements to select one option from a list of over 20 broad categories of functions for each contract entry in the inventory. Based on our review of relevant contract documents, such as statements of work, we were able to verify the categories of functions performed for

almost all of the contracts we reviewed, but we could not determine the extent to which civilian IC elements contracted for these functions. For example, we were able to verify for one civilian IC element's contract that contract personnel performed functions within the systems engineering category, but we could not determine the number of personnel dedicated to that function because of unreliable obligation and FTE data.

Further, the IC elements often lacked documentation to support why they used core contract personnel. In preparing their inventory submissions, IC elements can select one of eight options for why they needed to use contract personnel, including the need to provide surge support for a particular IC mission area, insufficient staffing resources, or to provide unique technical, professional, managerial, or intellectual expertise to the IC element that is not otherwise available from U.S. governmental civilian or military personnel. However, for 81 of the 102 records in our sample coded as unique expertise, we did not find evidence in the statements of work or other contract documents that the functions performed by the contractors required expertise not otherwise available from U.S. government civilian or military personnel. For example, contracts from one civilian IC element coded as unique expertise included services for conducting workshops and analysis, producing financial statements, and providing program management. Overall, the civilian IC elements could not provide documentation for 40 percent of the 287 records we reviewed. As previously noted, in our January 2014 report, we recommended that IC CHCO develop a plan to enhance internal controls for compiling the core contract personnel inventory.

Limited Progress Has Been Made in Developing Policies and Strategies on Contractor Use to Mitigate Risks

CIA, ODNI, and the executive departments that are responsible for developing policies to address risks related to contractors for the six civilian IC elements within those departments have generally made limited progress in developing such policies. Further, the eight civilian IC elements have generally not developed strategic workforce plans that address contractor use and may be missing opportunities to leverage the inventory as a tool for conducting strategic workforce planning and for prioritizing contracts that may require increased management attention and oversight.

By way of background, federal acquisition regulations provide that as a matter of policy certain functions government agencies perform, such as

determining agency policy, are inherently governmental and must be performed by federal employees.[7] In some cases, contractors perform functions closely associated with the performance of inherently governmental functions.[8] For example, contractors performing certain intelligence analysis activities may closely support inherently governmental functions. For more than 20 years, OMB procurement policy has indicated that agencies should provide a greater degree of scrutiny when contracting for services that closely support inherently governmental functions.[9] The policy directs agencies to ensure that they maintain sufficient government expertise to manage the contracted work. The Federal Acquisition Regulation also addresses the importance of management oversight associated with contractors providing services that have the potential to influence the authority, accountability, and responsibilities of government employees.[10]

Our prior work has examined reliance on contractors and the mitigation of related risks at the Department of Defense, Department of Homeland Security, and several other civilian agencies and found that they generally

[7]See generally Federal Acquisition Regulation (FAR) § 2.101 for the definition of inherently governmental functions and FAR § 7.503(c) which includes a list of functions that are considered to be inherently governmental.

[8]Functions closely associated with the performance of inherently governmental functions are not considered inherently governmental, but may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the government administers contractor performance. FAR § 7.503(d).

[9]Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, *Inherently Governmental Functions* (Sept. 23, 1992 [Rescinded]); OFPP Policy Letter 93-1, *Management Oversight of Service Contracting* (May 18, 1994).

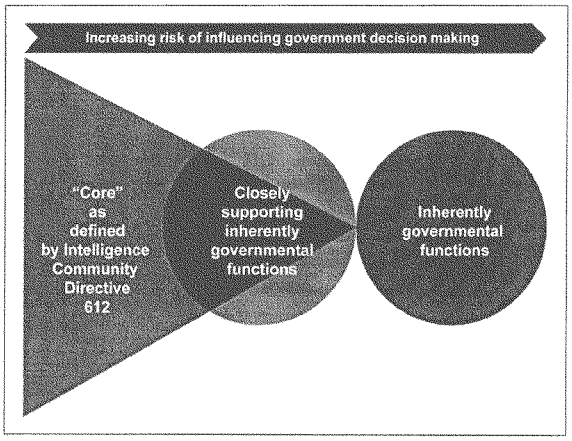
[10]See generally FAR § 37.114, which requires agencies to provide special management attention to contracts for services that require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products, as they have the potential for influencing the authority, accountability, and responsibilities of government officials.

did not fully consider and mitigate risks of acquiring services that may inform government decisions.[11]

Within the IC, core contract personnel perform the types of functions that may affect an IC element's decision-making authority or control of its mission and operations. While core contract personnel may perform functions that closely support inherently governmental work, these personnel are generally prohibited from performing inherently governmental functions. Figure 1 illustrates how the risk of contractors influencing government decision making is increased as core contract personnel perform functions that closely support inherently governmental functions.

[11]GAO, *Managing Service Contracts: Recent Efforts to Address Associated Risks Can Be Further Enhanced*, GAO-12-87 (Washington, D.C.: Dec. 7, 2011); *Contingency Contracting: Improvements Needed in Management of Contractors Supporting Contract and Grant Administration in Iraq and Afghanistan*, GAO-10-357 (Washington, D.C.: Apr. 12, 2010); *Defense Acquisitions: Further Actions Needed to Address Weaknesses in DOD's Management of Professional and Management Support Contracts*, GAO-10-39 (Washington, D.C.: Nov. 20, 2009); and *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services*, GAO-07-990 (Washington, D.C.: Sept. 17, 2007).

Figure 1: Risk Associated with the Use of Core Contract Personnel



Source: GAO. | GAO-14-692T

More recently, OFPP's September 2011 Policy Letter 11-01 builds on past federal policies by including a detailed checklist of responsibilities that must be carried out when agencies rely on contractors to perform services that closely support inherently governmental functions. The policy letter requires executive branch departments and agencies to develop and maintain internal procedures to address the requirements of the guidance. OFPP, however, did not establish a deadline for when agencies need to complete these procedures. In 2011, when we reviewed civilian agencies' efforts in managing service contracts, we concluded that a deadline may help better focus agency efforts to address risks and therefore recommended that OFPP establish a near-term deadline for agencies to develop internal procedures, including for services that closely support inherently governmental functions. OFPP generally concurred with our recommendation and commented that it would likely

establish time frames for agencies to develop the required internal procedures, but it has not yet done so.[12]

In our January 2014 report, we found that CIA, ODNI, and the departments of the other civilian IC elements had not fully developed policies that address risks associated with contractors closely supporting inherently governmental functions. DHS and State had issued policies and guidance that addressed generally all of OFPP Policy Letter 11-01's requirements related to contracting for services that closely support inherently governmental functions. However, the Departments of Justice, Energy, and Treasury; CIA; and ODNI were in various stages of developing required internal policies to address the policy letter. Civilian IC element and department officials cited various reasons for not yet developing policies to address all of the OFPP policy letter's requirements. For example, Treasury officials stated that the OFPP policy letter called for dramatic changes in agency procedures and thus elected to conduct a number of pilots before making policy changes.

We also found that decisions to use contractors were not guided by strategies on the appropriate mix of government and contract personnel. OMB's July 2009 memorandum on managing the multisector workforce and our prior work on best practices in strategic human capital management have indicated that agencies' strategic workforce plans should address the extent to which it is appropriate to use contractors.[13] Specifically, agencies should identify the appropriate mix of government and contract personnel on a function-by-function basis, especially for critical functions, which are functions that are necessary to the agency to effectively perform and maintain control of its mission and operations. The OMB guidance requires an agency to have sufficient internal capability to control its mission and operations when contracting for these critical functions. While IC CHCO requires IC elements to conduct strategic workforce planning, it does not require the elements to determine the appropriate mix of personnel either generally or on a function-by-function basis. ICD 612 directs IC elements to determine, review, and evaluate the number and uses of core contract personnel when conducting strategic workforce planning but does not reference the requirements related to

[12]GAO-12-87.

[13]GAO-02-373SP; and GAO, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, GAO/OCG-00-14G (Washington, D.C.: September 2000).

determining the appropriate workforce mix specified in OMB's July 2009 memorandum or require elements to document the extent to which contractors should be used. As we reported in January 2014, the civilian IC elements' strategic workforce plans generally did not address the extent to which it is appropriate to use contractors, either in general or more specifically to perform critical functions. For example, ODNI's 2012-2017 strategic human capital plan outlines the current mix of government and contract personnel by five broad function types: core mission, enablers, leadership, oversight, and other. The plan, however, does not elaborate on what the appropriate mix of government and contract personnel should be on a function-by-function basis. In August 2013, ODNI officials informed us they are continuing to develop documentation to address a workforce plan.

Lastly, the civilian IC elements' ability to use the inventory for strategic planning is hindered by limited information on contractor functions. OFPP's November 2010 memorandum on service contract inventories indicates that a service contract inventory is a tool that can assist an agency in conducting strategic workforce planning. Specifically, an agency can gain insight into the extent to which contractors are being used to perform specific services by analyzing how contracted resources, such as contract obligations and FTEs, are distributed by function across an agency. The memorandum further indicates that this insight is especially important for contracts whose performance may involve critical functions or functions closely associated with inherently governmental functions. When we met with OFPP officials during the course of our work, they stated that the IC's core contract personnel inventory serves this purpose for the IC and, to some extent, follows the intent of the service contract inventories guidance to help mitigate risks. OFPP officials stated that IC elements are not required to submit separate service contract inventories that are required of the civilian agencies and DOD, in part because of the classified nature of some of the contracts. The core contract personnel inventory, however, does not provide the civilian IC elements with detailed insight into the functions their contractors are performing or the extent to which contractors are used to perform functions that are either critical to support their missions or closely support inherently governmental work. For example, based on the contract documents we reviewed, we identified at least 128 instances in the 287 records we reviewed in which the functions reported in the inventory data did not reflect the full range of services listed in the contracts. In our January 2014 report, we concluded that without complete and accurate information in the core contract personnel inventory on the extent to which contractors are performing specific

functions, the civilian IC elements may be missing an opportunity to leverage the inventory as a tool for conducting strategic workforce planning and for prioritizing contracts that may require increased management attention and oversight.

In our January 2014 report, we recommended that the Departments of Justice, Energy, and Treasury; CIA; and ODNI set time frames for developing guidance that would fully address OFPP Policy Letter 11-01's requirements related to closely supporting inherently governmental functions. The agencies are in various stages of responding to our recommendation. For example, Treasury indicated plans to issue guidance by the end of fiscal year 2014. DOJ agreed with our recommendation, and we will continue to follow up with them on their planned actions. CIA, DOE, and ODNI have not commented on our recommendation, and we will continue to follow up with them to identify what actions, if any, they are taking to address our recommendation. To improve the ability of the civilian IC elements to strategically plan for their contractors and mitigate associated risks, we also recommended that IC CHCO revise ICD 612 to require IC elements to identify their assessment of the appropriate workforce mix on a function-by-function basis, assess how the core contract personnel inventory could be modified to provide better insights into the functions performed by contractors, and require the IC elements to identify contracts within the inventory that include services that are critical or closely support inherently governmental functions. IC CHCO generally agreed with these recommendations and indicated it would explore ways to address the recommendations.

In conclusion, IC CHCO and the civilian IC elements recognize that they rely on contractors to perform functions essential to meeting their missions. To effectively leverage the skills and capabilities that contractors provide while managing the government's risk, however, requires agencies to have the policies, tools, and data in place to make informed decisions. OMB and OFPP guidance issued over the past several years provide a framework to help assure that agencies appropriately identify, manage and oversee contractors supporting inherently governmental functions, but we found that CIA, ODNI, and several of the departments in our review still need to develop guidance to fully implement them. Similarly, the core contract personnel inventory can be one of those tools that help inform strategic workforce decisions, but at this point the inventory has a number of data limitations that undermines its utility. IC CHCO has recognized these limitations and, in conjunction with the IC elements, has already taken some actions to improve the inventory's reliability and has committed to doing more. Collectively,

incorporating needed changes into agency guidance and improving the inventory's data and utility, as we recommended, should better position the IC CHCO and the civilian IC elements to make more informed decisions.

Chairman Carper, Ranking Member Coburn, and Members of the Committee, this concludes my prepared remarks. I would be happy to answer any questions that you may have.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Timothy DiNapoli at (202) 512-4841, or at dinapolit@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Molly W. Traci, Assistant Director; Claire Li; and Kenneth E. Patton.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

AUG 25 2014

Dear Chairman Carper:

Enclosed please find the Principal Deputy Director of National Intelligence, Stephanie L. O'Sullivan's responses to the post-hearing Questions for the Record from the 18 June 2014 Senate Homeland Security and Governmental Affairs Committee Hearing titled "The Intelligence Community: Keeping Watch Over its Contractor Workforce."

Please do not hesitate to contact my office at 703-275-2474 if you require further assistance regarding this or any other matter.

Sincerely,

Deirdre M. Walsh
Director of Legislative Affairs

Enclosure:
Responses to Questions for the Record from 18 June 2014 Hearing

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 1

Executive Order 13526 – Classified National Security Information – prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. The executive order provides for eight classification categories that include military plans and intelligence activities. The order specifically states that, "[i]nformation shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security."

Question #1: Why have the number of contractors and the cost of contracts been classified?

Answer: Whether or not the number of contractors or the cost of contracts is classified depends on the details exposed. For example, the total number of contractors or IC staff is deemed sensitive enough to classify because it may reveal an IC organization's size, capability, or resources devoted to an intelligence objective. This information, if released, could also imply an agency's priority or mission scope. While a snapshot in time of an IC agency's contractor resource level may not be that revealing, this information, over time, can easily provide insights into sensitive intelligence mission areas and priorities. This is not to say that every time a specific number of contractors are revealed that it automatically must be classified. It may often be necessary to generalize the number of resources, which may not require classification. Again, it depends on the context and amount of details provided.

Regarding the cost of contractors, current and long-standing classification guidance has been that budget and financial information tied directly or indirectly to the National Intelligence Program (NIP), below the aggregate top line amount approved by Congress, is classified. This is because the release of such information may lead to knowledge of or insight into an Intelligence Community mission, sensitive program, target, vulnerability, capability, or intelligence source and method. We do, however, make distinctions in our classification guidance for the non-mission or infrastructure support areas (e.g., HR), where the sensitivity to national security is reduced.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 2

Question #2: What is the "identifiable or describable damage to national security" in declassifying the number of contractors within the IC and their cost?

Answer: The damage to national security would be that the information could easily reveal or deduce the agency or mission area size, capability, or resources devoted to an intelligence objective along with the intelligence priorities or mission scope. Should a foreign adversary be made aware of the resources dedicated to intelligence activities, it may also present counterintelligence concerns.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 3

You stated at the hearing that the number of contractors and the cost of those contracts were sometimes classified at the request of the contractors. Yet these same contractors advertise their work with the intelligence community (IC) on their company websites.

Question #3: What reasons do contractors give to the IC when requesting that the number of contractors and the cost of those contracts be classified?

Answer: Actually, costs and numbers are not typical reasons that a contractor would request that a contract be classified. Although some contractors have been known to advertise their work with the IC on their websites, there are others who do not want to have their affiliation with the IC publicly known. Often these companies have an international business base. The fact that they are doing business with certain IC elements could have a negative impact on business and their stock prices. Such companies have been known to indicate that that they are only willing to enter into a contract with the government if the contract is classified.

Ultimately, classification decisions are the responsibility of the government. The government sometimes determines that the relationship between a particular IC element and company needs to be classified because the fact that an IC element is doing business with that company would reveal an interest and/or involvement with specific technologies or activities. Public knowledge of this or other important facts such as the work location could compromise sources and methods by creating vulnerabilities that can be exploited by our enemies. Classification decisions by the government are made based on whether the information can reasonably be expected to cause identifiable or describable damage to national security.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 4

You expressed concerns at the hearing that revealing the number and cost of contractors could reveal identities of specific contractors.

Question #4: Couldn't the total number of IC contractors and the total cost of those contracts be unclassified without revealing the actual identities of any of the contractors? If not, why not?

Answer: It could, were this information strictly limited to the total numbers of IC contractors. However, the total cost of the contracts represents financial information tied to the NIP below the aggregate top line amount approved by Congress, which, as noted in our response to Question 1, is classified.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 5

Question #5: What is the administration's position on extending current IC whistleblower protections to IC contractors?

Answer: Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information,* requires agencies to provide a review process that protects employees who have made protected disclosures from reprisals through adverse personnel actions or adverse decisions concerning eligibility to access classified information. Intelligence Community Directive (ICD) 120, *Intelligence Community Whistleblower Protection*, was developed in response to the requirement in Section D of PPD-19 that the Director of National Intelligence issue policies and procedures for ensuring all employees serving in IC elements are aware of the protections and review processes available to individuals who make protected disclosures. The ICD also clarifies that PPD-19 protects contractors who make protected disclosures from reprisal in the form of adverse decisions concerning eligibility to access classified information.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 7

Question #7: Does ODNI have a definition for "inherently governmental"? If not, how does ODNI define the distinction between work that closely supports inherently governmental functions and inherently governmental functions themselves?

Answer: The ODNI utilizes the standard definition for an inherently governmental function set forth in FAR 2.101, which provides that an inherently governmental function is:

"a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to –

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services."

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 6

In your testimony you stated that, "Core contract personnel may not and do not perform inherently governmental functions."

Question #6: How do you ensure that contractor staff that work in government facilities and that work alongside Federal employees are not performing "inherently governmental functions"?

Answer: IC Element Contracting Officers are responsible for the acquisition of services on behalf of the Intelligence Community. Prior to entering into a contract, the Contracting Officers are responsible for ensuring that all requirements of law, executive orders, and applicable regulations have been met as required by Federal Acquisition Regulation (FAR) 1.602-1. It is customary for Contracting Officers and procurement attorneys to closely review the Statements of Work for services contracts to ensure that the services to be performed do not include inherently governmental functions. Moreover, FAR 7.503(e) requires agencies to establish procedures ensuring that a responsible requirements official provides the contracting officer a written determination that none of the functions performed under the contract are inherently governmental. In accordance with FAR 37.114, after award of a contract, the Contracting Officer and other designated officials monitor contract performance to continue to ensure compliance with applicable federal laws and regulations and ensure that contractors do not perform inherently governmental functions

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 8

Question #8: Please provide concrete examples, including specific job descriptions, of inherently governmental work and work that closely supports inherently governmental functions.

Answer: Appendix A to OFPP Policy Letter 11-01 includes an illustrative list of functions that are considered to be inherently governmental. The IC does not have any contracts that perform inherently governmental functions. Appendix B to the same letter includes an illustrative list of functions that are closely associated with the performance of inherently governmental functions. As a concrete example of inherently governmental work within the ODNI, the attached position description for a contracting officer is provided. (See attached document entitled Position Description)

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 9

You have stated that the preference for hiring a contractor over a federal employee is restricted to situations in which the employee will be needed for a limited duration.

Question #9: What is the threshold for when a service is a "limited duration"?

Answer: There are times when we know that our requirements are not permanent or enduring in nature. The term "limited duration" has a general meaning, and there is not a specific defined threshold. There are many reasons for using contract support. Examples include services that are being performed in the war zones or conflict areas; often these contracts are funded with Overseas Contingency Operations (OCO) appropriations. In such situations, it makes good sense to use contractors to perform the work. The contract only exists as long as the funding or the requirement exists. When the requirement ends, the contract simply ends.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 10

Question #10: Are there any core contract personnel that have been performing the same job function for more time than a "limited duration"? If so, how many?

Answer: As previously noted, there is not a standard definition of what constitutes a limited duration. It should also be noted that the IC Core Contractor Inventory does not track individual core contract personnel, but rather total Full-Time Equivalents (FTEs) on individual contracts.

Hearing Date: 18 June 2014
Committee: SHSGAC
Member Senator McCaskill
Witness: Ms. O'Sullivan
Question 11

Question #11: Does the IC have a centralized contractor management system that allows the 8 IC components to compare contractors and look at past performance of contractors?

Answer: While the IC does not utilize a centralized system, it does share past performance information within source selections, as needed.