



PROJECT ON GOVERNMENT OVERSIGHT

**Testimony of Scott Amey, General Counsel
Project On Government Oversight
before the Senate Committee on Homeland Security
and Governmental Affairs, Subcommittee on
Oversight of Government Management,
the Federal Workforce, and the District of Columbia**

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

I want to thank Chairman Akaka, Ranking Member Johnson, and the Subcommittee for asking the Project On Government Oversight (POGO)¹ to testify about issues related to intelligence contracting. I am Scott Amey, POGO’s General Counsel.

Throughout its thirty-year history, POGO has created a niche in investigating, exposing, and helping to remedy waste, fraud, and abuse in government contract spending. We have supported many reforms that enhance competition, accountability, and oversight. Additionally, we have voiced concerns about aspects of the acquisition and contracting systems that place taxpayer funds at risk. Many acquisition reforms were imposed prior to the large increase in federal contract spending (which exceeded \$537 billion in fiscal year 2010),² consolidation in the contractor community, the large-scale hiring of contractors to perform government services, and increased demands on the acquisition workforce, all of which have led to waste, fraud, and abuse.

In light of today’s hearing, the members of this Subcommittee should be asking:

1. What intelligence services are we buying?
2. How are we buying those intelligence services?

The first question requires a comprehensive look at the government’s overall acquisition planning structure and how best to place agencies in a position to achieve their missions. Simply

¹ Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO’s investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government. For more information about POGO, please visit www.pogo.org.

² USASpending.gov, “Prime Award Spending Data, FY 2010.”

http://usaspending.gov/explore?fiscal_year=2010&tab=By+Agency&fromfiscal=yes&carryfilters=on&Submit=Go
(Downloaded September 16, 2011)

stated, what goods and services are required to meet the intelligence community's (IC) needs? The "how are we buying it" question places us more in the contracting weeds. The answer to that question often involves a discussion about types of contracts, level of competition, costs, award and incentive fees, duration, accountability, oversight, and transparency.

I am typically able to provide a general assessment of an agency's contracting portfolio because the public has access to basic contracting data via the Web. However, in the case of the IC, the doors to such data are closed. For example, missions, contract awards and dollar amounts, and the number of contractor personnel are classified and therefore not publically available. The best data that has been made publicly available is from a mid-2000s inventory of IC core contractor personnel, which documented that the IC budget was roughly \$42 billion, approximately 70 percent of the IC budget was spent on contracts (not contractors), the government workforce was approximately 100,000, and contractors comprised approximately 28 percent of the total IC workforce.³

That inventory of contractor personnel found that many government services are being performed by contractors—supporting intelligence collection and operations, information technology (IT) activities, analysis and production, and other administrative functions.⁴ Outsourcing those functions was largely the result of the downsizing of the federal workforce in the 1990s, and the subsequent surge and mission demands after 9/11.⁵ There is no doubt that contractors play a role in the IC, but with more flexibility to bring intelligence jobs in-house,⁶ mission accomplishment could be enhanced and performed more cost-efficiently.

Last week, Senator Feinstein raised IC contracting concerns at a joint hearing of the Senate and House Select Committees on Intelligence:

In the immediate aftermath of the 9/11 attacks, the IC hired thousands of contractors as a matter of convenience, and for their expertise. Contractors were tasked to conduct intelligence operations, collection, exploitation, and analysis and all are critical tasks for the Intelligence Community and include – I would argue – inherently governmental functions that should be done by government employees at one-third less cost per employee.

³ Conference Call with Dr. Ronald Sanders, Associate Director of National Intelligence for Human Capital, "Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel," August 27, 2008, pp. 2-3. http://www.asisonline.org/secman/20080827_interview.pdf (Downloaded April 28, 2011) (Hereinafter Call with Dr. Ronald Sanders); Office of the Director of National Intelligence, "Key Facts about Contractors," no date provided, pp. 1-2. http://www.dni.gov/content/Truth_About_Contractors.pdf (Downloaded September 16, 2011) (Hereinafter Key Facts about Contractors); Tim Sharrock, "The corporate takeover of U.S. intelligence," *Salon*, June 1, 2007. http://www.salon.com/news/feature/2007/06/01/intel_contractors (Downloaded September 16, 2011)

⁴ Call with Dr. Ronald Sanders, pp. 2-3.

⁵ Call with Dr. Ronald Sanders, p. 2.

⁶ Last week, the House passed the Intelligence Authorization Act for Fiscal Year 2012 (H.R. 1892), which includes a provision that will allow "the employment of civilian personnel in excess of the number of full-time equivalent positions for fiscal year 2012 authorized by the classified Schedule of Authorizations." <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1892pcs/pdf/BILLS-112hr1892pcs.pdf>

The Office of the DNI recently reported that for Fiscal Year 2010 “core contractors” accounted for 23% of the total IC Human Capital Workforce, down only one percent from the year before. The overall number of contractors is in the tens of thousands; the numbers across intelligence, defense, and homeland security is in the hundreds of thousands.

We had an agreement in 2009 to reduce IC contractor numbers by 5 percent a year, but it is clear that progress has not been maintained and sufficient cuts are not being made.⁷

The first concern raised by Senator Feinstein involves the use of contractors to perform inherently government functions—functions that, by law, must be performed by government employees.⁸ Just last week, the Office of Federal Procurement Policy issued a final policy letter stating that “[t]he direction and control of intelligence and counter-intelligence operations” are considered inherently governmental functions.⁹ However, although the government is prohibited from directly outsourcing the direction and control of intelligence operations, there are instances when contractors appear to have crossed the line.

For example, in 2004, accounts of physical, psychological and sexual abuse of detainees in Iraq’s Abu Ghraib prison were made public.¹⁰ Interrogations at the facility were the responsibility of the U.S. Army’s military police and intelligence divisions, which hired contractors to augment interrogation, analyst, and linguist personnel.¹¹ To obtain interrogation services, the Department of Defense (DoD) relied on a Department of the Interior contracting office, which issued task orders to CACI International for interrogation, screening, and other intelligence-related services through a General Services Administration (GSA) Schedule information technology contract.¹² Not only were 11 of the 12

⁷ Opening Statement of Senator Dianne Feinstein, Chairman, Senate Select Committee on Intelligence, at the Joint Senate Select Committee on Intelligence/House Permanent Select Committee on Intelligence hearing regarding the “Anniversary of the 9/11 Attacks,” September 13, 2011, p. 3. <http://intelligence.senate.gov/110913/feinstein.pdf> (Downloaded September 14, 2011)

⁸ Federal Activities Inventory Reform Act of 1998, Public Law 105-270, Sec. 5(2)(A): “The term ‘inherently governmental function’ means a function that is so intimately related to the public interest as to require performance by Federal Government employees.” http://www.whitehouse.gov/omb/procurement_fairact (Downloaded September 16, 2011); FAR Subpart 7.503(a) “Contracts shall not be used for the performance of inherently governmental functions.” https://www.acquisition.gov/far/html/Subpart%207_5.html

⁹ Office of Federal Procurement Policy, “Publication of the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, Performance of Inherently Governmental and Critical Functions,” September 12, 2011, *Federal Register*, Vol. 76, No. 176, p. 56240. <http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf> (Downloaded September 16, 2011)

¹⁰ Seymour Hersh, “Annals of National Security: Torture at Abu Ghraib,” *The New Yorker*, May 10, 2004. http://www.newyorker.com/archive/2004/05/10/040510fa_fact (Downloaded September 16, 2011)

¹¹ Government Accountability Office, *Interagency Contracting: Problems with DoD’s and Interior’s Orders to Support Military Operations* (GAO-05-201), April 2005, pp. 1-2. <http://www.gao.gov/new.items/d05201.pdf> (Downloaded September 16, 2011)

¹² Memorandum from Earl E. Devaney, Inspector General, Department of the Interior, to the Assistant Secretary for Policy, Management and Budget regarding the “Review of 12 Procurements Placed Under General Services Administration Federal Supply Schedules 70 and 871 by the National Business Center (Assignment No. W-EV-OSS-0075-2004),” July 16, 2004, p. 1. <http://www.gpo.gov/fdsys/pkg/GPO-DOI-IGREPORTS-2004-i->

procurements found to be “outside the scope of work” for the schedules,¹³ but important questions about inherently governmental functions were raised about the use of contractors in intelligence activities.¹⁴

The Government Accountability Office (GAO) and the Department of Homeland Security Inspector General (DHS IG) have found instances of contractors performing intelligence work very closely associated with inherently government functions. The GAO review of DHS professional and management support service contracts found one contractor providing intelligence threat analysis.¹⁵ A DHS IG review of the Customs and Border Protection’s Secure Border Initiative program found contractors drafting or helping to draft highly sensitive intelligence program planning and acquisition documents.¹⁶

To ensure that contractors’ day-to-day activities do not transform into inherently governmental functions, agencies need robust contract administration and oversight offices, which is not always the case.

Outsourcing work to federal contractors is premised on the theory that it provides the government with flexibility to meet its needs. That is true in certain situations, but outsourcing work, especially in certain sensitive program areas, might constrain agency missions because government employees, unlike contractors, can perform both inherently governmental and non-inherently governmental functions. The government might have more flexibility to adapt to changing policies, missions, and intelligence operations if it did not have to worry about its contractors straying into inherently governmental work. We do not want contractors and contracting officers bickering in the field over what is or is not an inherently governmental function, and taxpayers should not have to pay the additional expense to supplement the contractor workforce each and every time the work treads close to the inherently governmental function line.

Senator Feinstein’s opening statement also raised concerns about the costs of outsourcing intelligence services. The government spends hundreds of billions of dollars annually on

0049/pdf/GPO-DOI-IGREPORTS-2004-i-0049.pdf (Downloaded September 16, 2011) (Hereinafter Devaney Review)

¹³ Devaney Review, p. 1; Government Accountability Office, *Interagency Contracting: Problems with DoD’s and Interior’s Orders to Support Military Operations* (GAO-05-201), April 2005, p. 2.

<http://www.gao.gov/new.items/d05201.pdf> (Downloaded September 16, 2011)

¹⁴ Memorandum from Patrick T. Henry, Assistant Secretary of the Army, to the Assistant Deputy Chief of Staff for Intelligence regarding “Intelligence Exemption,” December 26, 2000.

http://projects.publicintegrity.org/docs/wow/25-d_Intelligence.pdf (Downloaded September 16, 2011); Dan Guttman, “The Shadow Pentagon: Private contractors play a huge role in basic government work—mostly out of public view,” *The Center for Public Integrity*, September 29, 2004.

<http://projects.publicintegrity.org/pns/report.aspx?aid=386> (Downloaded September 16, 2011)

¹⁵ Government Accountability Office, *Department of Homeland Security: Improved Assessment and Oversight Needed to Manage Risk of Contracting for Selected Services* (GAO-07-990), September 2007, p. 11.

<http://www.gao.gov/new.items/d07990.pdf> (Downloaded September 16, 2011)

¹⁶ Department of Homeland Security, Office of Inspector General, *Better Oversight Needed of Support Services Contractors in Secure Border Initiative Programs* (OIG-09-80), June 2009, p. 4.

http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-80_Jun09.pdf (Downloaded September 16, 2011)

services—in fact, approximately one-quarter of all discretionary spending now goes to service contractors.¹⁷ The cost issue is the responsibility of both the government and the contractors. The government is at fault when it does a poor job of defining requirements or utilizing contract types that do not protect the taxpayer.¹⁸ Contractors are at fault when their performance results in cost overruns and delays.

But we must also ask a more fundamental question: Is the government actually making contracting decisions based on cost-saving concerns? Certainly, competition between contractors allows the government to obtain best value, low prices, and enhanced contractor performance. And for years, Washington has operated under the premise that outsourcing saves money. However, according to a report POGO released last week,¹⁹ contracting out services may be costing taxpayers, on average, **83 percent more** than if federal employees had done the work, based on our analysis of 35 job classifications.

Many of the job classifications POGO analyzed are typically characterized as “commercial”—services that can be found in the yellow pages. However, with respect to the subject of today’s hearing, it’s worth pointing out the federal government also outsources functions and activities that are critical to national security. For example, the Office of the Director of National Intelligence reported in 2008 that the government outsourced 28 percent of its intelligence workforce²⁰ and paid contractors 1.66 times what it costs to have this work performed by federal employees (\$207,000 annually for a contractor employee versus \$125,000 for a federal employee).²¹ POGO’s analysis supports these findings. POGO analyzed the costs associated with outsourcing language specialists, who are frequently used to perform intelligence functions, and found that contractors may be billing the government, on average, **\$211,203** per year, **more than 1.9 times** the **\$110,014** per year the government compensates a federal employee. And contractors may be billing the federal government **nearly 3.5 times**, on average, what private sector language specialists are compensated on the open market.²²

Today’s hearing will help us learn more about how service contractors are supporting the IC. Looking at the issue from both a mission-achieving and a cost-saving perspective is imperative.

¹⁷ In 2010, service contracts accounted for \$320 billion of the nearly \$1.26 trillion discretionary spending total. According to data compiled by POGO from the Federal Procurement Data System – Next Generation (FPDS-NG), the federal government awarded \$320 billion in service contracts in fiscal year 2010. https://www.fpds.gov/fpdsng_cms/ (Downloaded September 16, 2011); Office of Management and Budget, *Budget of the United States Government*, Fiscal Year 2012, p. 200.

<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf> (Downloaded August 18, 2011)

¹⁸ Robert O’Harrow Jr., “Costs Skyrocket As DHS Runs Up No-Bid Contracts,” *The Washington Post*, June 28, 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/27/AR2007062702988.html> (Downloaded September 16, 2011)

¹⁹ Project On Government Oversight, *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*, September 13, 2011, pp. 1, 13-15. <http://pogoarchives.org/m/co/igf/bad-business-report-only-2011.pdf> (Hereinafter *Bad Business*)

²⁰ Key Facts about Contractors, p. 2.

²¹ Call with Dr. Ronald Sanders, p. 8.

²² *Bad Business*, p. 17.

Perhaps the IC community might find that significant cost savings can be realized while strengthening national security.

POGO recommends that IC agencies, Congress, and the Committees with jurisdiction conduct assessments of IC service contracts in order to gain a better understanding of the types of services procured, the total dollars awarded, the contract vehicles utilized, and contractor performance history. To the extent possible, these assessments should be made publicly available. I would also urge all IC agencies to review the Office of Federal Procurement Policy's new guidance on work reserved for government employees to ensure that contractors are not performing inherently governmental functions.

In addition, the government needs an improved cost comparison methodology that fairly and accurately compares the government's full life-cycle costs of hiring or retaining government employees with the costs of awarding service contracts. Finally, I would urge Congress to reconsider its decision to impose government employee FTE ceilings. Such restrictions prevent the government from operating at optimal efficiency and flexibility and, in the long run, might result in increased costs for agencies and taxpayers.

Thank you for inviting me to testify today. I look forward to answering any questions and working with the Subcommittee to further explore how intelligence contracting can be improved.



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Scott H. Amey, General Counsel

Mr. Amey rejoined the POGO staff in 2003 and directs POGO's Contract Oversight investigations, including reviews of federal spending on goods and services, the responsibility of top federal contractors, and conflicts-of-interest and ethics concerns that have led to questionable contract awards. Mr. Amey has testified before Congress and federal agency panels, submitted public comments on proposed regulations, educated the public by working with the media, and authored reports, alerts, and blogs on contracting issues.

Mr. Amey previously worked at POGO in the mid-1990s as a Research Associate, and was one of the organization's most prolific investigators. One of his most notable projects during that time was an investigation into Area 51 that resulted in the Air Force admitting the black facility's existence and submitting to compliance with environmental laws. Mr. Amey also undertook investigations into Boston's Big Dig project and safety concerns at nuclear power plants. Mr. Amey left POGO in 1998 to attend law school, after which he clerked for the Honorable James A. Kenney, III, at the Court of Special Appeals of Maryland from 2001-2003. Mr. Amey received a J.D., magna cum laude, from the University of Baltimore School of Law in 2001, and a B.A. from the University of Pittsburgh in 1993. Mr. Amey is licensed to practice law in Maryland.