



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON DC 20310-0111



December 26, 2000

REPLY TO
ATTENTION OF

Exemption Number 2000-0004

MEMORANDUM THRU ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF
THE ARMY
DIRECTOR OF THE ARMY STAFF

FOR ASSISTANT DEPUTY CHIEF OF STAFF FOR INTELLIGENCE

SUBJECT: Intelligence Exemption

Reference, memorandum, ADCSINT, DAMI-ZC, 1 December 2000, subject:
Request for Exemption – Army Military Intelligence.

I have made the following determinations regarding the intelligence function performed by military and Federal civilian employees in the Army operating force and the generating force. The criteria for identifying the scope of these determinations are described in the enclosure. Military performing this function are not reported in the public Federal Activities Inventory Reform Act (FAIR) inventory. My determinations do not apply to Army assets under the operational control of other Defense activities or executive agencies.

At the tactical level, the intelligence function under the operational control of the Army performed by military in the operating forces is an inherently Governmental function barred from private sector performance. An inherently Governmental function includes those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. The gathering and analysis of intelligence as described above requires the exercise of substantial discretion in applying Government authority because intelligence at the tactical level is integral to the application of combat power by the sovereign authority. Army warfighting doctrine provides that battalion and brigade S-2s, and division and corps G-2s provide assessments of enemy capabilities and intentions, critical situational awareness and force protection information, and targeting data relevant to the operational perspective and organizational capability of their respective commanders. Such tailored intelligence, often derived solely from organic intelligence assets, is a fundamental tenant of effective operational planning and mission success.

At the operational and strategic level, the intelligence function (less support) performed by military personnel and Federal civilian employees is a non-inherently



Governmental function that should be exempted from private sector performance on the basis of risk to national security from relying on contractors to perform this function. The acquisition of intelligence-related technologies and systems, and the instruction and training of soldiers and Army civilian employees on intelligence doctrine and methods are non-inherently Governmental functions. The capabilities provided by military performing these functions also are exempted from conversion to private sector performance on the basis of risk to national security in order to retain a core capability.

In the generating forces and at the theater level in the operating forces, I have exempted the intelligence function from conversion to private sector performance to the extent necessary to provide adequate oversight of contracted intelligence capabilities, and to maintain sufficient in-house skills in this function. As pointed out in the referenced memorandum, contractors may be used to facilitate the gathering or interpretation of intelligence information, in circumstances where contractors are the sole source of a particular capability. In addition, contractors provide maintenance support of, and support the research, development and acquisition of, intelligence-related technologies, as well as support of the instruction of military and civilian employees on military intelligence doctrine and skills. The use of contractors to augment instruction in the intelligence function performed at Army schools, where there is only a requirement to maintain a sufficient core capability of military cadre needed to retain proficiency with current doctrine, presents little risk to national security. However use of contractors in other situations presents much greater risks.

Private contractors may be acquired by foreign interests, acquire and maintain interests in foreign countries, and provide support to foreign customers. The contract administration oversight exerted over contractors is very different from the command and control exerted over military and civilian employees. Therefore, reliance on private contractors poses risks to maintaining adequate civilian oversight over intelligence operations. Civilian oversight over intelligence operations and technologies is essential to assure intelligence operations are conducted with adequate security safeguards, and within the scope of law and direction of the authorized chain of command and officials. In addition, once a function is contracted there is no assurance that the capability provided by a contractor will be maintained beyond the term of the contract.

Accordingly, my exemption, as a matter of Army policy, bars the contracting of the intelligence function (less support) except where a contractor provides the sole capability for gathering or analyzing intelligence or for acquiring and maintaining intelligence-related technologies. The exception to the bar in these limited circumstances is premised on the Army retaining, or growing, a sufficient core capability to oversee the contract without compromising national security.

In addition, this bar does not apply to contractor performance of the training function pertaining to intelligence at Army schools. Field Manual 100-21, *Contractors on the Battlefield* (March 2000) should be modified and clarified to reflect these determinations.



Patrick T. Henry
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

CRITERIA FOR FY01 FEDERAL ACTIVITY

ARMY REFORM (PAIR) ACT MI FORCE EXEMPTIONS

Draft M&RA Exemption Memo Paragraph	CRITERION: Military Intelligence MTOEs	CRITERION: Non-Military Intelligence MTOEs	CRITERION: Military Intelligence and Non-Military Intelligence TDA/TDA Augmentations
1	N/A	N/A	N/A
2	N/A	N/A	N/A
3 (Tactical)	SRC 34 TOEs / MTOEs	In all but SRC 34-series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations).	In TDA Augmentations to all-SRC series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations).
4 (Operational and Strategic)	SRC 30 and 32-series TOEs / MTOEs	In all but SRC 30 and 32-series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations).	In all TDAs and TDA Augmentations to all-SRC series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Functional Areas 35 (Military Intelligence) or 34 (Strategic Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations); Civilian Skill Codes: 00132, 00194, Civilian Authorizations funded under PE 121034.
5 (Generating / Theater Forces, RDA)	SRC 30 and 32-series TOEs / MTOEs	In all but SRC 30 and 32-series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations).	In all TDAs and TDA Augmentations to all-SRC series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Functional Areas 35 (Military Intelligence) or 34 (Strategic Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations); Civilian Skill Codes: 00132, 00194, Civilian Authorizations funded under PEs 121034 or 654766.
6 (Intelligence Oversight, Security)	SRC 30, 32, and 34-series TOEs / MTOEs	In all but SRC 30, 32, and 34-series TOEs / MTOEs: Officers - Area of Concentration 35 (Military Intelligence); Warrant Officers - Branch 35 (Military Intelligence); Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / Electronic Warfare Operations).	Civilian Skill Codes: all 00132, 00194; Civilian Skill Codes: 0080, 0096 assigned to INSCOM (Command / Assignment Code "AS"); Civilian Authorizations funded under PE 121034.
7	N/A	N/A	N/A
8	N/A	N/A	N/A

Summary

- 1) MI SRCs 30, 32, 34
- 2) MI Officers: Area of Concentration (AOC) 35 (Military Intelligence); Functional Areas (FAs) 35 (Military Intelligence) and 34 (Strategic Intelligence).
- 3) MI Warrant Officers: Branch 35 (Military Intelligence).
- 4) MI Enlisted: Chiefs 33 (Electronic Warfare / Intercept Systems Maintenance), 96 (Military Intelligence) (which includes MOS series 90x and 97X), or 98 (Signals Intelligence / EW Operations).
- 5) MI Civilians: all 00132, 00194; Civilian Skill Codes: 0080, 0096 assigned to INSCOM (Command / Assignment Code "AS"); Civilian Authorizations funded under PEs 121034 or 654766.