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NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
OFFICE OF THE INSPECTOR GENERAL



To: [redacted] for Chief, D14 Date: 28 September 2015

From: [redacted]

Subject: [redacted] Assignment of inherently governmental functions to a contractor

File No: IV-15-0003

Precedence: Routine

Purpose: To provide a summary report of an investigation and to recommend that this case be closed.

Details:

I. (U) Background

(U//~~FOUO~~) On 9 April 2013, a source informed the Office of Inspector General (OIG) of potential concerns related to [redacted] GG14, [redacted]. Specifically, it was alleged that [redacted] a team lead located at [redacted], gave one of her team members, [redacted] a government contractor, a list of accusations of technical incompetence of [redacted] the team lead of another [redacted] team located at NSA Texas [redacted], and members of the [redacted] team, and asked [redacted] to look for evidence to prove them. In addition, the source believed [redacted] may have confided in [redacted] a member of the [redacted] team, about the alleged tasking.

(U//~~FOUO~~) The [redacted] has locations at Fort Meade [redacted] and the extended enterprise, to include [redacted]. Two teams mentioned in this report, whose team members are responsible for analyzing and reporting on projects called [redacted] are located at [redacted] (within the Office of [redacted] and [redacted] (within the Office of [redacted]).

(U//~~FOUO~~) Historically, the teams worked simultaneously on [redacted] with each team having responsibility for reporting on different aspects of the [redacted]. Frequently, the teams would overlap on their reporting because the process

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model the [] used to [] was inefficient. This caused confusion, a lack of communication, and conflicts between the two teams.¹

II. (U) Issue

(U//FOUO) Did [] assign inherently governmental functions to []
[] Conclusion: Unsubstantiated.

III. (U) Applicable Standards

- **Public Law 105-270, Federal Activities Inventory Reform Act of 1998**

Section 5(2)(A)(2) Inherently Governmental Function

- (A) DEFINITION- 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.
- (B) FUNCTIONS INCLUDED- The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government...
- ...(C) FUNCTIONS EXCLUDED- The term does not normally include:
- (i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials

- **Federal Acquisition Regulation, Part 7-Acquisition Planning, Subpart 7.5- Inherently Governmental Functions**

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions....

- **NSA/CSS Policy 1-39, Inherently Governmental Functions, dated 25 September 2014, revised 5 February 2015**

Policy

...2. Contractors may perform closely associated functions so long as Government employees provide greater attention and an enhanced degree of management oversight. ...Government employees must ensure that contractors do not perform inherently governmental functions.

Procedures

...5. ... Government officials must evaluate the function on the basis of:

¹ (U//FOUO) The information regarding the model the [] used for [] was provided, under oath, by [] GG15, deputy chief, [] Additional testimony from [] is included in this summary report.

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- a. The nature of the function: whether the function involves the exercise of sovereign powers of the United States; and
- b. The type and level of discretion exercised. Agencies are to evaluate whether:
 - 1) The exercise of discretion commits the Government to a course of action where two or more alternative courses of action exist and decision-making is not already limited or guided by existing policies, procedures, directions, orders, or other guidance;
 - 2) The function may be performed by a contractor who does not have the authority to decide the overall course of action;
 - 3) The contractor's involvement and work product effectively preempt the Government official's decision-making process, discretion, or authority.

...8. ...The goal is to ensure that contractors' advice does not usurp governmental decision-making but rather permits Government officials to make informed, independent judgments.

Responsibilities

...11. Government officials...at all levels shall:

- ...c. Ensure that contractors supporting their mission are not performing functions determined to be inherently governmental.

Definitions

...21. Inherently Governmental Function. – A function that is so intimately related to the public interest as to require performance by U.S. employees.

...b. The term does not include:

- 1) Gathering information for or providing advice, opinion, recommendations, or ideas to U.S. Government officials;...

IV. (U) Investigative Activity

1. (U) Document Review

(U//~~FOUO~~) **Email Evidence.** The OIG reviewed [redacted] Top Secret email files (*.pst) between June 2012 and December 2013. The OIG found no references to [redacted] providing a list of accusations of technical incompetence of [redacted] team members to [redacted] and tasking him to look for evidence to prove them. In addition, the OIG found no evidence that [redacted] had discredited, or was seeking to discredit, the work of the [redacted] team members.

(U//~~FOUO~~) The OIG requested [redacted] Top Secret email files (*.pst) but they were not available. [redacted] is no longer assigned at NSA.

B. (U) Interviews

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1. (U//FOUO) [redacted] GG15, chief [redacted] was interviewed telephonically on 29 September 2014 and provided the following information under oath.

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(U//FOUO) It is [redacted] belief that [redacted] and others from [redacted] wanted the responsibility for [redacted] to be moved from [redacted] to [redacted]. [redacted] had heard rumors that the [redacted] team thought that the [redacted] was too important to operate from the field. Therefore, instead of trying to justify the move of the project based on the importance of location, [redacted] believed that [redacted] tried to build a case against the [redacted] team to show that they were doing a poor job on reporting.

(U//FOUO) [redacted] a government contractor assigned to [redacted] told [redacted] that [redacted] had told him that [redacted] had asked [redacted] to look through the work that the [redacted] team had produced on [redacted] to see if they had neglected to report on something [redacted] said that although [redacted] did not actually complete the task, she reported the matter to her supervisor at the time, [redacted]. She told [redacted] that [redacted] who worked with [redacted] at [redacted] may know about the alleged tasking, or may have overheard [redacted] ask [redacted] to review the work of the [redacted] team.

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2. (U//FOUO) [redacted] GG15, deputy office chief, Office of [redacted] was interviewed on 25 August 2015 and provided the following information under oath.

(U//FOUO) [redacted] is the current supervisor of [redacted] and has never received any negative feedback about her. She said [redacted] was a very knowledgeable subject matter expert who serves in a technical director role. She described [redacted] as a team player who always focuses on the mission and strives to do the mission, correctly.

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(U//FOUO) At the time the complaint was filed in the OIG, [redacted]

[redacted] was the chief, [redacted] and [redacted] was a team lead in [redacted] [redacted] a contractor, was a member of [redacted] team.

[redacted] described [redacted] as smart and always very professional. Occasionally, [redacted] worked with members of [redacted]

(U//FOUO) The team at [redacted] had about [redacted] that they analyzed and reported on. Mission responsibility for each [redacted] was divided up in what was called the [redacted]

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[REDACTED]

(U//~~FOUO~~) Mission delegation for [REDACTED] was divided up across the organization, which also included the extended enterprise locations. [REDACTED] consistently created conflicts and miscommunications between various team members at [REDACTED] and [REDACTED] because the model made it difficult to synchronize work and oftentimes, team members would not "stay in their lanes."

(U//~~FOUO~~) In early 2013, [REDACTED] director at the time, directed that a response group be assembled for [REDACTED]. He named [REDACTED] as the lead. From the start, due to the [REDACTED] delegation of responsibilities, there was confusion and miscommunication about who was responsible for certain tasks and reporting.

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(U//~~FOUO~~) [REDACTED] at [REDACTED] delegated their piece of [REDACTED] to [REDACTED], which meant the responsibility for reporting on [REDACTED] was now based out of [REDACTED] at [REDACTED] however, did not delegate their part of the [REDACTED] to the team at [REDACTED]. However, the [REDACTED] team reported on [REDACTED] and this caused many problems between the two teams. After the [REDACTED] team was repeatedly told by various [REDACTED] leaders to stop reporting on [REDACTED] they continued to do so.

(U//~~FOUO~~) The [REDACTED] lead, [REDACTED] and the [REDACTED] lead, [REDACTED] challenged the [REDACTED] reports on [REDACTED] and told them they should not be reporting on [REDACTED] and pointed out that they were not coordinating their reporting with [REDACTED] team. In addition, some of the analysis that [REDACTED] had submitted had to be redone by the team at [REDACTED] because it was inaccurate.

(U//~~FOUO~~) Around April 2013, [REDACTED] organized a meeting between the two teams that was held over a video-teleconferencing capability. The meeting was an opportunity for members of both teams, and their management, to discuss the work distribution between the two teams. At the [REDACTED] location, [REDACTED] and others from [REDACTED] attended the meeting. During the meeting, [REDACTED] did not say anything. [REDACTED] provided a warning to the group regarding [REDACTED] equities.

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(U//~~FOUO~~) The meeting was tense because animosity already existed between the two teams before the meeting started. The [REDACTED] team members kept pressing the [REDACTED] and [REDACTED] kept telling them that they were outside of their lane. [REDACTED] eventually lost his

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temper and the meeting went downhill and the relationships between the two teams further deteriorated.

(U//FOUO) [redacted] sent [redacted] the [redacted] Manager and analytic lead for that target, to [redacted] to talk with them about how they needed to focus their reporting on [redacted]

(U//FOUO) In May 2013, the [redacted] was reorganized. With the reorganization, [redacted] management decided to change model for mission delegation for [redacted] delegation—meaning there were [redacted] for which the [redacted] team had total responsibility for and [redacted] for which the [redacted] team had responsibility.

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(U//FOUO) In June 2013, [redacted] management published a list of all of the [redacted] and which team had responsibility for the set. The particular [redacted] discussed on the basis of the OIG complaint was assigned to [redacted] while other sets were assigned to [redacted] [redacted] did not have any influence over where this or other [redacted] were moved. Management made those decisions based on certain criteria that the [redacted] managers all agreed upon. Decisions were not made in a vacuum.

3. (U//FOUO) [redacted] GG14, [redacted] was interviewed telephonically on 13 August 2015 and provided the following sworn testimony.²

(U//FOUO) At the time the allegation was filed with the OIG, [redacted] was the [redacted] team lead for [redacted] [redacted] denied ever giving [redacted] a list of accusations of technical incompetence of [redacted] and the [redacted] team [redacted] denied ever asking [redacted] to research or look for evidence to prove incompetence of the [redacted] team. She found the allegation to be "laughable and ridiculous."

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(U//FOUO) Historically, there has always been tension between the [redacted] and [redacted] teams because lines of responsibility were not always clear. In 2013, the [redacted] team was given an informal and verbal task to follow the same targets that the [redacted] team was following in relation to [redacted] This caused a lot of confusion and created more tension between the teams. As the work was on-going, the [redacted] team noted problems they discovered in the reporting of the [redacted] team so that the reporting could be corrected.

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² (U) [redacted] was interviewed over the telephone because she is on extended sick leave and did not know when she would be returning to work.

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(U//~~FOUO~~) Eventually, the [redacted] was pulled from the [redacted] team's mission because they were not reporting on it correctly. [redacted] did not make a recommendation to her management that the [redacted] be moved from [redacted] to [redacted] although the fact that her team discovered inaccuracies in the reporting of the [redacted] team may have influenced management's decision to relocate it to [redacted].

4. (U//~~FOUO~~) [redacted] a former contractor who was previously assigned to [redacted] at the time the allegation was filed with the OIG, was interviewed telephonically on 13 August and 24 September 2015 and voluntarily provided the following information.³

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(U//~~FOUO~~) [redacted] was the government lead for the [redacted] team. She was the technical subject matter expert on [redacted] that both the [redacted] and [redacted] teams had a responsibility to report on. [redacted] described [redacted] as an excellent and top-notch analyst for whom he had a lot of respect. [redacted] said his opinion of [redacted] was very high and she never overstepped her bounds in her role as the government team lead. [redacted] was never uncomfortable with any task he performed while assigned to [redacted].

(U//~~FOUO~~) [redacted] duties included analyzing data for accuracy for the mission and then reporting on the accurate data.

(U//~~FOUO~~) The [redacted] team and the [redacted] team were both working on the same target and the [redacted] team wrote several inaccurate reports [redacted]. The members of the [redacted] team were having difficulty doing their job because they were "not technical enough" to accurately do the work assigned to them. People across the [redacted] knew they were providing inaccurate information in their reports.

(U//~~FOUO~~) [redacted] (team lead) verbally pointed out the inaccuracies of the [redacted] team's reporting. [redacted] spoke to both teams about a briefing the [redacted] team had provided to members of the intelligence community that was based on reporting the [redacted] team had done. The [redacted] team had [redacted]. Many in [redacted] felt that [redacted] sacrificed all of their credibility when they provided bad information to government decision-makers. [redacted] held a video-teleconference between the two teams, which [redacted] attended, where [redacted] discussed the [redacted] team's inaccurate reporting. [redacted] told them that they were an embarrassment to the intelligence community. [redacted] relayed to them that their inaccurate reporting would not be tolerated.

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³ (U//~~FOUO~~) As of May 2014, [redacted] no longer worked at NSA.

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(U//FOUO) Because [redacted] was the target lead, she asked [redacted] to analyze the [redacted] that the [redacted] team had inaccurately reported on and to provide his feedback to her on what was included in the [redacted]

(U//FOUO) [redacted] did not provide [redacted] with a written list of inaccuracies of the [redacted] team's reporting, nor did she provide a list of technical incompetence of the team, in general, or of anyone in particular from the [redacted] team. [redacted] did not provide any type of list to [redacted] [redacted] verbally asked [redacted] to analyze the [redacted] that the [redacted] team had reported on, which was part of his normal duties.

(U//FOUO) [redacted] worked with a member of the [redacted] team, [redacted] as he performed his review and analysis of the [redacted] [redacted] was a nice person, but he did not have the background of expertise to analyze the [redacted] [redacted] was not happy that he had to work on the task of re-looking at the [redacted] because [redacted] had already invested his time on the original, inaccurate, reporting. [redacted] told [redacted] that any inaccuracies from the original reporting would need to be corrected. Eventually, a list of things the [redacted] team had inaccurately reported on was generated based on input from across [redacted] so that the inaccuracies in the reporting could be corrected.

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(U//FOUO) The members of the [redacted] team did not like the members of the [redacted] team and held a grudge against them and the [redacted] team eventually lost their mission to [redacted] would be suspicious of anyone from the [redacted] team making allegations against him, [redacted] or the [redacted] team, in general.

5. (U//FOUO) [redacted] an NSA contractor who was assigned to [redacted] at the time the allegation was filed with the OIG, was interviewed telephonically on 2 October 2014 and voluntarily provided the following information.

(U//FOUO) In late January 2013, [redacted] performed a TDY from [redacted] to [redacted]. While at [redacted] [redacted] said that [redacted] told him he had been assigned the task of going through the work of the [redacted] team to try and find errors or mistakes they had made on their reporting regarding [redacted]. Although [redacted] did not tell [redacted] who had assigned the task to him, [redacted] believed that [redacted] had assigned the task because she was the lead of the [redacted] team. According to [redacted] [redacted] told him that he did not want to be in the middle of a controversy between the two teams. [redacted] did not know if [redacted] ever completed the task. [redacted] notified his team lead,

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[redacted] of what [redacted] had told him. Eventually, the responsibility for the [redacted] was relocated to [redacted] but [redacted] did not know why it was moved. He did not think that [redacted] had the power to influence the relocation of the [redacted] from [redacted] to [redacted]

6. (U//FOUO) [redacted] GG14, [redacted] who was assigned to [redacted] at the time the allegation was filed with the OIG, exchanged several emails with the OIG dated 1 September and 2 October 2014.⁴ [redacted] said that [redacted] an [redacted] team lead, and another member of the [redacted] team, were very upset because they thought [redacted] had tried to discredit their work. However, [redacted] could not remember any other details about the matter.

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V. (U) Analysis

(U//FOUO) The OIG uses a preponderance of the evidence standard in administrative and civil investigations. This standard is considered to be satisfied if, after weighing the evidence, there is a greater than 50% chance that the proposition is true. In this case, there is no evidence to show that [redacted] assigned inherently governmental functions to [redacted]

(U//FOUO) [redacted] denied that she provided [redacted] with a list of accusations of technical incompetence of [redacted] and members of the [redacted] team and asked [redacted] to look for evidence to prove them.

(U//FOUO) [redacted] said [redacted] did not provide any type of list to him regarding [redacted] or members of the [redacted] team, but that [redacted] verbally asked him to analyze [redacted] upon which the [redacted] team's reporting was based because many across the [redacted] had already determined that the reporting was inaccurate.

(U//FOUO) [redacted] an [redacted] management official, said that team leads other than [redacted] had challenged some of the reporting completed by [redacted] and had determined [redacted] was reporting on [redacted] that they should not have been reporting on. Furthermore, some of the work completed by the [redacted] team had to be redone by the team at [redacted] because it was inaccurate.

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(U//FOUO) The preponderance of the evidence shows that [redacted] did not ask [redacted] to evaluate the performance of government analysts, rather, she asked him to review reporting for accuracy. As stated in NSA/CSS Policy 1-39, *Inherently Governmental Functions*, 25 September 2014, revised 5 February 2015, the term "inherently governmental function" does not include gathering information for or providing advice, opinion, recommendations, or ideas to U.S.

⁴ (U//FOUO) [redacted] was working at an overseas location, which, due to time difference, made it difficult to schedule a time to speak to the OIG investigator on the telephone.

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Government officials. The task [redacted] asked [redacted] to perform was not an inherently governmental function.

(U//~~FOUO~~) Based on the information contained herein, the OIG found there was insufficient evidence to support the claim and the allegation was unsubstantiated.

VI. (U) Conclusion

(U//~~FOUO~~) Unsubstantiated. The OIG did not find by a preponderance of evidence that [redacted] assigned inherently governmental functions to a contractor.

VII. (U) Recommendations

(U//~~FOUO~~) Recommend that this investigation be closed without further investigative action and that the OIG notify [redacted] of the investigative conclusion.

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