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### I. (U) SUMMARY

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(U//~~FOUO~~) [redacted] employed by [redacted] supporting NSA/CSS Texas (NSAT). [redacted] was identified through the Office of the Inspector General (OIG) labor mischarging initiative as someone who spent a significant amount of hours outside of the NSA access control perimeter. Subsequently, the OIG opened an investigation on [redacted] regarding potential labor mischarging on NSA contracts. [redacted] and [redacted]

(U//~~FOUO~~) The OIG concluded, based on the preponderance of the evidence, that during the period of 1 February 2013 through 31 January 2014, [redacted] knowingly claimed false labor charges on his company timesheets, totaling 258.75 hours. His actions violated 31 U.S.C. § 3802, and likely caused [redacted] to violate Federal Acquisition Regulation (FAR) 31.201-2 thereby reducing allowable costs and payments under FAR 52.216-7.<sup>1</sup>

(U//~~FOUO~~) Based upon labor rates provided to the OIG, the 258.75 false hours claimed by [redacted] equates to an approximate loss to the Agency of \$21,274.43. A summary of the investigative findings will be forwarded to the prime contractor and the Maryland Procurement Office, Contract Administration and Policy Office (B3P). The OIG will also provide a summary of the investigative findings to the Associate Directorate for Security and Counterintelligence (ADS&CI), Special Actions (Q242).

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<sup>1</sup> (U//~~FOUO~~) [redacted] may have also violated 18 U.S.C. §§ 287 and 1001 by knowingly and willfully falsifying his timesheets. This potential violation was reported to the United States Attorney's Office for the District of Maryland on [redacted]

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Approved for Release by NSA on 09-30-2019,  
FOIA Case # 85643 (litigation)

## II. (U) BACKGROUND

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### (U) Introduction

(U//~~FOUO~~) [redacted] has been a contractor employee supporting NSA since [redacted] [redacted] was assigned to [redacted] until 29 November 2013, and then was assigned to [redacted] as a [redacted] in [redacted]

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### (U) Applicable Authorities

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(U//~~FOUO~~) The investigation looked at possible violations of the following authorities. Applicable excerpts are contained in Appendix A.

- (U) 31 U.S.C. § 3802 – False Claims and Statements; liability
- (U) FAR 31.201-2 – Determining Allowability
- (U) FAR 52.216-7 – Allowable Cost and Payment

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### III. (U) FINDINGS

(U//~~FOUO~~) **ALLEGATION:** Did [redacted] knowingly submit false timesheets to his company in violation of 31 U.S.C. § 3802, causing the government to be billed for labor hours he did not actually perform; and likely causing [redacted] to violate FAR 31.201-2 thereby reducing allowable costs and payments under FAR 52.216-7?

(U//~~FOUO~~) **CONCLUSION:** Substantiated.

#### (U) Evidence

##### (U) Documentary Evidence

(U//~~FOUO~~) [redacted] was obtained and reviewed.  
The contract is attached at Appendix B, and states:

##### (U) ...Type of Contract...

*This is a Time-and-Materials type contract with formal task orders to be authorized by the Contracting Officer.*

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##### (U) ... Place of Performance ...

*Unless the written approval of the Contracting Officer is obtained in advance, the work herein shall not be performed at any facility, other than the contractor's plant located at [redacted] or the site of the sponsoring agency.*

(U//~~FOUO~~) **Contract** [redacted] was obtained and reviewed.  
The contract is attached at Appendix C, and states:

##### (U) ...Level of Effort (LOE)...

*(e) Effort performed in fulfilling the total level of effort specified above shall only include effort in direct support of this contract and shall not include effort expended on such things as local travel to and from an employee's usual work location, uncompensated effort while on travel status, truncated lunch periods, work (actual or inferred) at the employee's residence or other non-work locations, or other effort which does not have a specific and direct contribution to tasks described herein.*

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(U) . . . Place of Performance . . .

Unless the written approval of the Contracting Officer is obtained in advance, the work herein shall not be performed at any facility, other than at the Government site or the Contractor's site located [REDACTED]

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(U//FOUO) **Timesheets.** On 13 March 2014, [REDACTED] Human Resources [REDACTED] provided the OIG [REDACTED] timesheets covering the period 1 February 2013 through 31 January 2014. On 28 April 2014, she provided [REDACTED] labor rate of \$82.22 per hour. The timesheets show the number of hours [REDACTED] claimed to work each day on [REDACTED] or [REDACTED]. The timesheets are attached at Appendix D.

(U//FOUO) **NSA access control records.** NSA access control records for [REDACTED] covering the period 1 February 2013 through 31 January 2014 (231 work days) were obtained and compared to his timesheets for that same period. The initial analysis revealed 275.25 hours that [REDACTED] claimed on his timesheets but was not within access controlled spaces. After review of additional documents and testimony, [REDACTED] was given credit for travel time to NSA Washington (NSAW) on 23 June 2013, and for travel time from NSAW on 27 June 2013. These credits reduced the discrepancies to 258.75. The final analysis revealed [REDACTED] claimed he worked more hours than records reflect he was within access controlled spaces on 196 (84.8%) of 231 work days. The analysis also revealed seven days where [REDACTED] claimed to work less time than records reflect he was within access controlled spaces, totaling 3.50 hours, for which [REDACTED] was given credit, which reduced the total amount of discrepant hours. The analysis revealed that a majority of the discrepant hours were a result of late arrivals or early departures. There were 33 days that contained midday breaks ranging from 32 minutes to four hours and 19 minutes. The analysis is attached at Appendix E.

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(b) (4)(U) **Interviews:**

(U//FOUO) [REDACTED] supporting [REDACTED] was interviewed on 3 June 2014, and provided the following sworn testimony.

(U//FOUO) During the period under investigation [REDACTED] supported [REDACTED] and prior to December 2013 he supported [REDACTED] was a [REDACTED] on both contracts and worked in the same building. His government lead was [REDACTED] was in school full time, and in spring 2014, to attend his classes, he worked 0800 to 1400 on Mondays and Wednesdays and took leave for the rest of the day. On Tuesdays, he worked 0600 to 1400, attended midday classes, and then returned to work. Each class was an hour and 15 minutes long. [REDACTED] also attended evening classes on Mondays and Wednesdays.

(U//FOUO) All of [REDACTED] work is classified and there is no work he could have done outside of NSAT facilities. He traveled to NSAW in 2012 and 2013 for a conference. Over a year ago, [REDACTED] took online training on his home computer that was required by his

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company and might have taken training in January 2014 but he does not recall if that was time he claimed on the contract or overhead.

(U//FOUO) [redacted] completed his timesheet daily and his Site Lead [redacted] contractor employee, signed his timesheets. [redacted] worked as long as he could and then completed his timesheet each day. He was expected to work 80 hours every two weeks. He attempted to enter the total amount of time he was sitting at his desk into his timesheet. He thought his timekeeping was "ok" and accurate, although this investigation is making him wonder.

(U//FOUO) About once a week, [redacted] took lunch breaks at locations that were 15 to 20 minutes away from work. He considered his lunch break as part of his work day and did not account for it on his timesheet. He never considered it an issue but now he realizes he should account for his lunch breaks. Prior to this interview, [redacted] did not think about his labor hours as time that was charged to the Government. However, he understood that he was paid by his company and the company was paid by the Government. He thought the company was "bulk paid."

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(U//FOUO) When [redacted] left work early and did not work 40 hours by the end of that week, he used personal leave. It is possible [redacted] forgot to make up for hours he did not work but that is unlikely. He tried to make up for all hours each week and submitted his timesheet every Friday.

(U//FOUO) The OIG informed [redacted] that an analysis of his timesheets and access control records for one year revealed 275.25 discrepant hours. He was surprised by the amount of hours and thinks they are a result of him forgetting to make up or take leave for hours when he left work early. [redacted] college classes made it difficult for him to work a full 40 hours each week and it made things difficult at his home. Between school and managing his family he "just missed it." He did not know how his time was tracked and thought it was more about doing the job. There were days when [redacted] left work early but still claimed eight hours; however, [redacted] always intended to make up for the time or use leave. He thought there were days that he made up for that time.

(U//FOUO) At the end of each week, [redacted] signed his timesheet and thought he had made up all of his hours. [redacted] kept a tally of his hours in his head and was 100% confident that the hours he submitted were accurate; even though the OIG pointed out that a majority of days contain discrepant hours in his favor. [redacted] still claimed that he never knowingly submitted false time.

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(U//FOUO) [redacted] knows that he has to revise his timekeeping process and keep a written tally of his time. [redacted] was on medication to help him sleep and that medication might have affected his ability to track time. [redacted] is confused and cannot believe he submitted discrepant hours on his timesheets. He does not doubt the accuracy of the OIG analysis and thinks it is probably accurate and the issue is with him. [redacted] thinks the

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discrepant hours are a result of him misunderstanding how timecards were being kept, not understanding how he was supposed to track his time, and miscalculating his time.

(U//~~FOUO~~) [redacted] thinks the situation can be resolved with the discrepant hours being reimbursed, but he does not want to get fired.

(U//~~FOUO~~) [redacted] was interviewed again on 6 June 2014, to provide mitigating information and provided the following sworn testimony.

(U//~~FOUO~~) [redacted] thought about how he was tracking his time and realizes it was wrong. When he was missing 30 or 45 minutes he did not think that mattered and that it was "throw away time." When he was assigned to [redacted] he did not have to enter his time every day and generally just put eight hours every day, even on days he worked less than eight hours with the intention to make up those hours. There were times when he knowingly submitted his timesheet with time he did not make up for but he did not realize it mattered because he did not realize he was an hourly employee. He was not intentionally trying to cheat the government. He is mad at himself and knows it could have been avoided if he would have just asked if he was doing his time accurately. [redacted] believes that the total discrepant hours in the OIG spreadsheet analysis is time that he was not working.

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(U//~~FOUO~~) [redacted] Branch Chief, [redacted] was interviewed on 5 June 2014, and provided the following sworn testimony.<sup>2</sup>

(U//~~FOUO~~) [redacted] has been the Branch Chief, [redacted] since May 2013. [redacted] has been in their office since December 2013. [redacted] is an [redacted]. There was no work he could have done outside of an NSA Texas facility. [redacted] work schedule varied because he was in school full time. [redacted] sat near him and it looked like he worked full time, however, she arrived to work prior to his arrival. [redacted] worked a flex schedule because of his course schedule but he was there when she needed him and nothing raised any flags to her. [redacted] does not monitor civilian timesheets. If he left early or arrived late, he usually told her and she was under the assumption he used leave for those occasions and had no oversight over the hours he was claiming to have worked. She thought his performance was excellent and there was plenty of work to keep him busy each day.

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<sup>2</sup> (U//~~FOUO~~) [redacted] left [redacted] and moved to [redacted] in October 2014.

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**(U) Analysis and Conclusions**

(U//~~FOUO~~) 31 U.S.C. § 3802 prohibits any person from making, presenting, or submitting a claim that the person knows or has reason to know is false, fictitious, or fraudulent. Under applicable legal standards, a person “knowingly” makes a false statement whenever he or she acts with knowledge of its falsity or acts with reckless disregard of whether the statement is true.<sup>3</sup>

(U//~~FOUO~~) NSA access control records for [redacted] covering the period 1 February 2013 through 31 January 2014 (231 work days) were obtained and compared to his timesheets for that same period. The initial analysis revealed 275.25 discrepant hours. After review of additional documents and testimony, [redacted] was given credit for travel time to NSA Washington (NSAW) on 23 June 2013, and from NSAW on 27 June 2013. These credits reduced the discrepancies to 258.75.

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(U//~~FOUO~~) Based on [redacted] and [redacted] testimonies that [redacted] was in college full time during this period and sometimes took midday and evening classes during the week, it is likely that some of the discrepant hours are a result of [redacted] attending a college course during the workday or after work.

(U//~~FOUO~~) [redacted] testified that there were days he knowingly left work early and still claimed eight hours on his timesheet but he had the intention to make up for that time and thought there were days he made up for time. If [redacted] worked extra time on any days the OIG's analysis would show days he claimed to work less time than records reflect he was within access controlled spaces. The analysis revealed seven days on which [redacted] claimed less time than he was inside access controlled spaces. The total discrepancy for the seven days was 3.50 hours, which were deducted from the total amount of discrepant hours. The 3.50 discrepant hours in the Government's favor, however, represented only 1.3% of the total amount of discrepant hours (258.75 discrepant hours in his favor, plus 3.50 hours in the Government's favor). Further, the seven days on which there were discrepancies in the Government's favor comprised only 3% of the 231 work days, whereas 84.8% of the 231 work days contained discrepancies in his favor (196 days he claimed he worked more hours than records reflect he was within access controlled spaces).

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(U//~~FOUO~~) Further, during his second interview, [redacted] testified that he realized he was tracking his time incorrectly. He stated when he was missing 30 or 45 minutes he did not think that mattered and considered it “throw away time.” He also admitted that there were times when he knowingly submitted his timesheet with time he did not make up for, claiming he did not realize it mattered. Thus, the preponderance of the evidence supports the conclusion that [redacted] at the very least acted with reckless disregard of whether his timesheets were accurate and knowingly claimed more time than he worked.

<sup>3</sup> (U) See, e.g., *U.S. v. Lange*, 528 F.2d 1280 (5<sup>th</sup> Cir., 1976); 31 U.S.C. 3729.

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(U//~~FOUO~~) FAR 31.201-2(d) states that “[a] contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. . . .” By failing to accurately document his work hours, [REDACTED] likely caused [REDACTED] to violate FAR 31.201-2, thereby reducing allowable costs and payments under FAR 52.216-7.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that from 1 February 2013 through 31 January 2014, [REDACTED] knowingly claimed 258.75 hours on an NSA contract that were not actually performed. His actions violated 31 U.S.C. § 3802, and likely caused [REDACTED] to violate FAR 31.201-2 thereby reducing allowable costs and payments under FAR 52.216-7.

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**IV. (U) RESPONSE TO TENTATIVE CONCLUSION**

(U//~~FOUO~~) On 12 June 2015, the OIG notified [redacted] of the tentative conclusion. On 26 June 2015, [redacted] emailed the OIG the following response.

[redacted]

(U//~~FOUO~~) Regarding the investigation, I have been through my time cards again, and have nothing further to add in the way of justification or further evidence to reduce the deficit of hours worked versus those claimed.

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(U//~~FOUO~~) I would like to reiterate, for the record, that this was never due to any willful deception or fraud on my part. I was unaware that my salary was determined by hours billed to the government by my company. In short, I didn't know that contractors are—in essence—hourly employees. After more than 9 years working in NSA SCIFs as a military augment with little-to-no contact with federal contractors, it simply never occurred to me that the hours we work were tracked in any meaningful way. I believed that our work output and evaluations were the metrics by which we were measured. As such, I thought that the timesheets we fill out were more of a bookkeeping measure, rather than a serious reflection of the time spent in the SCIF and the hours billed by my company to the USG. To my mind, as long as I performed well and finished my work each day, then the timesheets were inconsequential.

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(U//~~FOUO~~) I was genuinely shocked by the revelations you shared with me last year regarding the CONFIRM system and the deficit of my hours, more than anything because it seemed like a negative reflection of my years of service and dedication to my country. Moreover, this was the result of a series of foolish assumptions that could have been easily avoided had I sought clarification. Once this came to my attention, I immediately corrected the issue and have not had, and will not have, any more false labor charges. Again, I sincerely apologize for my mistake.

(U//~~FOUO~~) [redacted] response provided no new information relative to the conclusion or requiring additional investigation; therefore, the conclusion remains unchanged. [redacted] email is attached at Appendix F.

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**V. (U) CONCLUSION**

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(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that from 1 February 2013 through 31 January 2014, [redacted] knowingly claimed 258.75 hours on an NSA contract that were not actually performed. His actions violated 31 U.S.C. § 3802, and likely caused [redacted] to violate FAR 31.201-2 thereby reducing allowable costs and payments under FAR 52.216-7

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### VI. (U) DISTRIBUTION OF RESULTS

(U//~~FOUO~~) A summary of this report of investigation will be provided to:

A. ADS&CI, Special Actions (Q242);

B. [redacted]; and

C. Maryland Procurement Office, Contract Administration and Policy Office (B3P).

