To: Chief, D14

From: [Redacted]

Subject: 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:

1. (U) Background

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

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

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


  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 that was provided, under oath, by GG15, deputy chief. Additional testimony from is included in this summary report.
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.

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

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

B. (U) Interviews

UNCLASSIFIED//FOR OFFICIAL USE ONLY
1. (U//FOUO) [redacted] GG15, chief [redacted] was interviewed electronically on 29 September 2014 and provided the following information under oath.

(U//FOUO) It is believed that [redacted] and others from [redacted] wanted the responsibility for [redacted] to be moved from [redacted] to [redacted]. They 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. 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.

(b) (3) - P.L. 86-36

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.

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

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

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

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

(U//FOUO) Around April 2013, ________ 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 ________ location, ________ and others from ________ attended the meeting. During the meeting, ________ did not say anything ________ provided a warning to the group regarding ________ equities.

(U//FOUO) The meeting was tense because animosity already existed between the two teams before the meeting started. The ________ team members kept pressing ________ and ________ kept telling them that they were outside of their lane. ________ eventually lost his
temper and the meeting went downhill and the relationships between the two teams further deteriorated.

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

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

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

3. (U//FOUO) __________ GG14, __________ 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, __________ was the __________ team lead for __________ __________ denied ever giving __________ a list of accusations of technical incompetence of __________ and the __________ team __________ denied ever asking __________ to research or look for evidence to prove incompetence of the __________ team. She found the allegation to be laughable and ridiculous.³

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

² (U) __________ was interviewed over the telephone because she is on extended sick leave and did not know when she would be returning to work.
(U//FOUO) Eventually, the ____________ was pulled from the ____________ team's mission because they were not reporting on it correctly. ______ did not make a recommendation to her management that the ____________ be moved from ____________ to ____________ although the fact that her team discovered inaccuracies in the reporting of the ____________ team may have influenced management's decision to relocate it to ____________.

4. (U//FOUO) ____________ a former contractor who was previously assigned to ____________ 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.

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

(U//FOUO) ____________ duties included analyzing data for accuracy for the mission and then reporting on the accurate data.

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

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

3 (U//FOUO) As of May 2014 ____________ no longer worked at NSA.
(U//FOUO) Because was the target lead, she asked to analyze the that the team had inaccurately reported on and to provide his feedback to her on what was included in the.

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

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

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

5. (U//FOUO) an NSA contractor who was assigned to 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, performed a TDY from to While at said that told him he had been assigned the task of going through the work of the team to try and find errors or mistakes they had made on their reporting regarding Although did not tell who had assigned the task to him, believed that had assigned the task because she was the lead of the team. According to told him that he did not want to be in the middle of a controversy between the two teams, did not know if ever completed the task, notified his team lead,
of what had told him. Eventually, the responsibility for the was relocated to but did not know why it was moved. He did not think had the power to influence the relocation of the from to GG14, who was assigned to at the time the allegation was filed with the OIG, exchanged several emails with the OIG dated 1 September and 2 October 2014.

 said that an team lead, and another member of the team, were very upset because they thought had tried to discredit their work. However, could not remember any other details about the matter.

**Analysis**

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 assigned inherently governmental functions to

denied that she provided with a list of accusations of technical incompetence of and members of the team and asked to look for evidence to prove them.

said did not provide any type of list to him regarding or members of the team, but that verbally asked him to analyze upon which the team’s reporting was based because many across the had already determined that the reporting was inaccurate.

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

The preponderance of the evidence shows that did not ask 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.

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.
Government officials. The task asked 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 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 of the investigative conclusion.