

## Another Timekeeping Issue

Written by Nick Sanders  
Thursday, 24 September 2020 00:00

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*“Charge what you work; work what you charge.”*

If you follow that simple piece of government contracting folk wisdom, it's tough to get into too much trouble.

Still, too many contractors end up the subject of Department of Justice press releases, announcing multi-million-dollar settlements related to timekeeping “challenges” and related issues.

Recently, the DCAA [published](#) a notice of SAIC's nearly \$6 million settlement with DoJ. That published report was a bit of “old news,” as the DoJ published its settlement [announcement](#) in June, roughly three months ago. What was the deal?

According to the DoJ announcement—

The United States contended that SAIC employees misused administrative leave by working on contract requirements for a certain project before funding was available and then later clearing those charges by adding extra billing hours that were not worked to a separate project. The United States also contended that SAIC employees were provided charge codes for their hours to be recorded to projects with available funding, while they continued to work on tasks that were not funded. Once the new funding arrived, the employees working on a project that provided the original funding would then charge their hours to the new project.

People who know SAIC and its commitment to internal controls were a bit shocked at the news. There was a decent discussion thread on LinkedIn by those who wondered what went wrong. SAIC, of course, used to be headquartered in San Diego, but now calls Reston, Virginia, home.

More recently, another San Diego entity settled with the DoJ for its own timekeeping “challenges.” According to this DoJ [press release](#), The Scripps Research Institute (TSRI),

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located in LaJolla, California, agreed to settle false claims allegations by paying \$10 million. According to the announcement—

The settlement resolves allegations that between 2008 and 2016, TSRI failed to have a system in place for its faculty to properly account for time spent on activities that cannot be charged directly to NIH-funded projects or are unrelated to the research activities of the NIH-funded project. Consequently, the U.S. contended that TSRI improperly charged time spent by faculty on developing, preparing, and writing new grant applications directly to existing NIH-funded projects, rather than allocating such charges as indirect costs. The U.S. also alleged that TSRI improperly charged NIH-funded projects for time spent by its faculty on other activities unrelated to the funded projects, such as teaching, TSRI committee work, and other administrative tasks.

Let's unpack paragraph a little bit.

The government alleged that TSRI permitted its faculty to charge non-project efforts to NIH-funded projects. Those non-project efforts included:

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Efforts    to prepare new grant applications (equivalent to Bid & Proposal    efforts)

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Time    spent teaching classes

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Time    spent attending committee meetings

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Time    spent on other (non-project) administrative tasks

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If the allegations were true, then TSRI had challenges in helping its faculty determine the difference between “direct” and “indirect” time. Direct time, of course, is the time spent on project activities; whereas, indirect time is the time spent on everything else that is not a project activity.

Title 2 of the Code of Federal Regulations, Chapter 200, discusses the cost principles applicable to educational institutions such as TSRI. 2 CFR § 200.413 (Direct costs) states—

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. ... Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards.

Obviously, TSRI had challenges in complying with the requirements/guidance quoted above. One would think a contractor (or grant recipient) would have the whole direct versus indirect thing figured out before submitting the first proposal. Moreover, it would appear that timekeeping training was lacking as well. Faculty should have received training in how to distinguish direct from indirect labor. If they had questions, TSRI should have provided a help line for them to call.

Now, perhaps TSRI did all that. We don't know.

But what we *do* know is that TSRI, a non-for-profit educational institution, just paid out \$10 million to resolve allegations related to its timekeeping “challenges.”

One more thing: As with so many other DoJ settlements, this one started with a *qui tam* suit filed by a former employee. The DoJ press release notes that the *qui tam*

relator will receive \$1.75 million (17.5%) of the settlement. As we recently

[noted](#)

, there is evidence showing that contractors with active hotlines or emails see reduced legal settlements. We have also observed that companies with internal reporting mechanism offer their employees a means of reporting concerns or suspected wrongdoing without having to file a

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lawsuit.

The continuing reportage of legal settlements related to mischarging of labor makes us think that every government contractor should think about these things.