

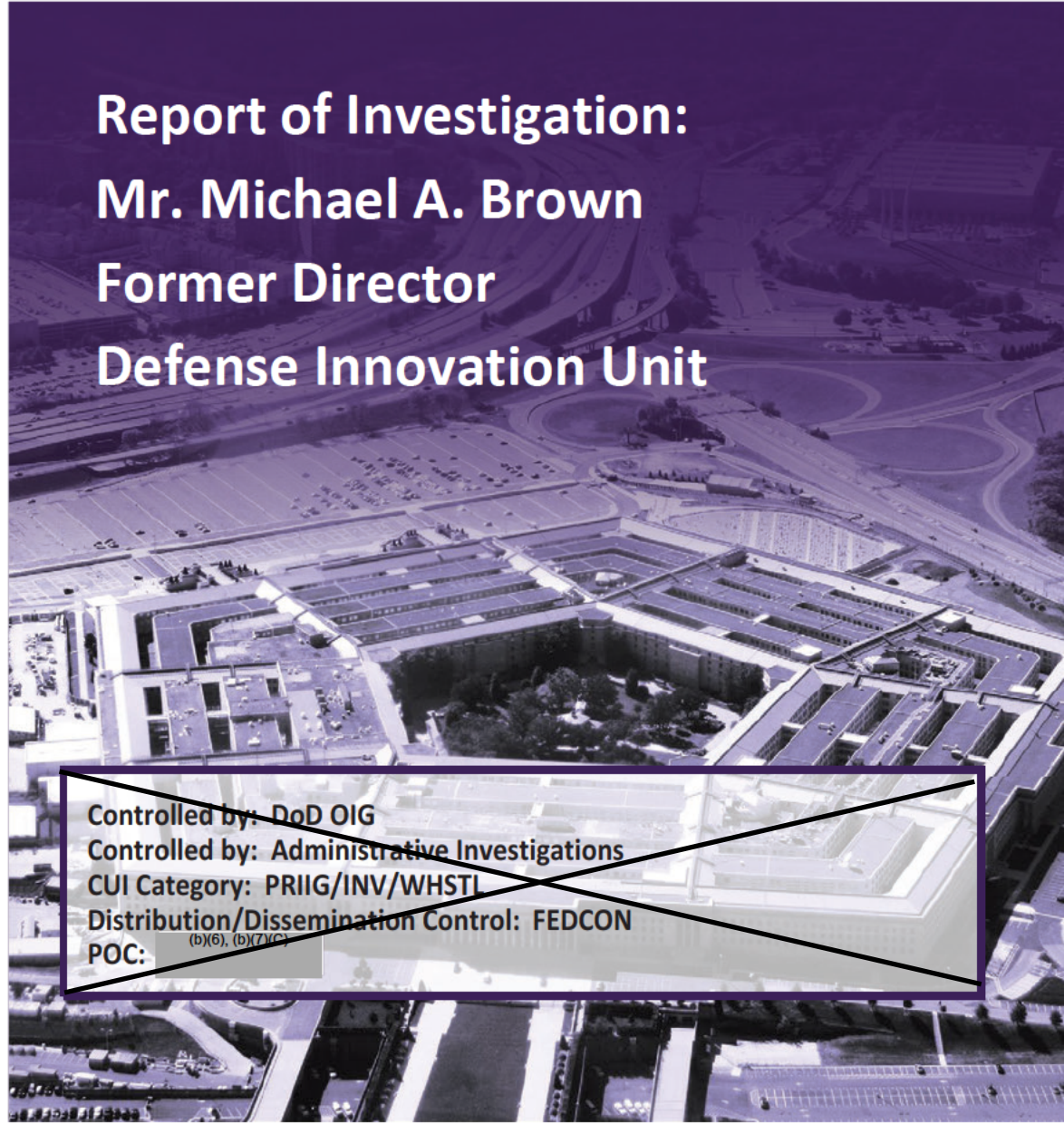


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INSPECTOR GENERAL

U.S. Department of Defense

SEPTEMBER 9, 2022



Report of Investigation: Mr. Michael A. Brown Former Director Defense Innovation Unit

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on 12/21/2022



**REPORT OF INVESTIGATION:
MR. MICHAEL A. BROWN
DIRECTOR, DEFENSE INNOVATION UNIT**

I. INTRODUCTION AND SUMMARY

Complaint Origin and Allegations

The DoD Hotline received a complaint against Mr. Michael A. Brown, Director, Defense Innovation Unit (DIU), on October 29, 2020. The complaint listed 15 different issues that the complainant described as problems within the DIU and “not appropriate.” In general, the complaint identified various personnel issues dealing with civilian, military, and contractor employees.

The complainant first e-mailed his concerns to DIU officials on May 28, 2020. Mr. Brown was copied on the complainant’s e-mail and forwarded the complaint to his legal advisor for review.¹ The DIU General Counsel appointed an investigating officer to conduct an internal investigation of the issues listed in the e-mail. The investigator submitted his report through the DIU General Counsel to Mr. Brown, who approved the conclusions on January 13, 2021, and directed the DIU to implement the recommendations.

The complaint to the DoD Hotline included a copy of the complainant’s e-mail to the DIU officials. Our office reviewed the complaint and initiated our investigation on June 21, 2021.

We evaluated the alleged conduct against the applicable standards in Appendix A.

Scope and Methodology of the Investigation

During our investigation, we interviewed 10 witnesses. Of the 10 witnesses, 8 either worked in the DIU or in the Office of the Under Secretary of Defense for Research and Engineering (OUSD[R&E]), the DIU’s parent organization. We interviewed two witnesses with expertise in DoD hiring authorities and practices. We also interviewed Mr. Brown. In addition, we reviewed applicable standards and more than 1,000,000 documents, including e-mails, attachments, and personnel records.

The complaint also contained other allegations not addressed in Section III of this report. These allegations do not involve potential misconduct by Mr. Brown and are discussed in Appendix B.

Conclusions

We did not substantiate the allegations against Mr. Brown.²

We concluded that Mr. Brown conducted his duties without partiality or favoritism, regularly consulted his staff, and did not direct or pressure his staff to violate standards regarding various personnel issues related to civilian, military, and contractor employees. We considered DoD 5500.07-R, “Joint Ethics Regulation (JER),” August 30, 1993, which requires that employees

¹ This initial complaint included allegations of misconduct against Mr. Brown, but was not forwarded to our office for review as required by DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013 (Incorporating Change 1, Effective April 28, 2020).

² We based our conclusions on a preponderance of the evidence, consistent with our normal process in administrative investigations.

endeavor to act in the public's interest and avoid losing impartiality or appearing to lose impartiality in carrying out official duties.

We examined the hiring actions that the complainant identified and found no evidence that Mr. Brown sought to improperly influence DIU selection processes. We also reviewed Mr. Brown's e-mails to examine his involvement in and actions related to 28 candidates who were considered for DIU positions. We found that Mr. Brown regularly sought guidance, input, advice, and recommendations from his staff about the DIU's selection processes.

II. BACKGROUND

Mr. Michael A. Brown

Mr. Brown assumed duties as the DIU Director on September 24, 2018. Mr. Brown served from 2016–2018 as a White House Presidential Innovation Fellow at the DoD. Before his Government service, Mr. Brown had extensive private sector leadership experience in the cybersecurity, software, and computer data storage industries.

Defense Innovation Unit

Established in 2016, the DIU functions as an interface node between the DoD, entrepreneurs, start-up firms, and commercial technology companies to increase DoD access to leading-edge commercial technologies and technical talent. The DIU strengthens national security by accelerating the adoption of commercial technology throughout the military and strengthening our allied and national security innovation bases.

The DIU recruits personnel from the technology sector into full-time, part-time, and term appointments as part of the Force of the Future initiative.³ The DIU works in coordination with the Military Departments and the National Guard Bureau to administer a unit tailor-made for Reserve Component personnel working in the technology sector.

The DIU is under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering (USD[R&E]).

³ The 25th Secretary of Defense, Ashton Carter, on his first day in office, announced his goal to build the Force of the Future for the DoD to maintain a competitive edge in bringing in top talent to serve the Nation.

III. ANALYSIS OF THE ALLEGATIONS

Chronology of Significant Events

Table 1 lists the significant events related to this investigation.

Table 1. Chronology of Significant Events

Date	Event
Sept. 24, 2018	Mr. Brown starts as the DIU Director.
May 2020–Jan. 2021	Mr. Brown directs an internal investigation into allegations of improper personnel practices at DIU.
Oct. 29, 2020	The DoD Hotline receives the complaint against Mr. Brown with the same allegations previously addressed in the DIU’s internal investigation.
June 21, 2021	The DoD OIG initiates its investigation.

Source: The DoD OIG.

ALLEGATIONS THAT MR. BROWN ENGAGED IN IMPROPER PERSONNEL PRACTICES FOR CIVILIAN, MILITARY, AND CONTRACTOR PERSONNEL

The complaint listed 15 different issues that the complainant described as problems within the DIU and not appropriate. We interviewed the complainant, who told us that he did not think the issues were “illegal,” but believed that when all of the issues were considered as a group, “each one of them [was] not appropriate.” The complainant identified another witness (Witness 1), who the complainant said was responsible for (b)(6), (b)(7)(C) and had similar concerns about the issues listed in his complaint. Witness 1 told us that DIU employees perceived that personnel actions were “done in a way that smacks of favoritism” to benefit certain people within the DIU.

We focused our investigation on interviewing witnesses who directly observed or interacted with Mr. Brown regarding the issues and personnel actions described in the complaint. We also examined documents and e-mails associated with the issues and personnel actions.

Based on the information provided by the complainant and other witnesses, we grouped issues and allegations into categories dealing with civilian, military, and contractor employees. In this section, we present complaints and facts associated with Mr. Brown’s alleged actions regarding various personnel issues including:

- civilian hiring actions,
- a cash award for a civilian employee,
- an employment verification memorandum,
- using DIU funds to pay for a Service member to attend a civilian university, and
- hiring and paying for contractor employees.

Civilian Hiring Actions

The complaint alleged that Mr. Brown circumvented Government processes and put obstacles in place to ensure only friends of DIU employees were selected for DIU positions. The complainant told us that he was concerned about the method used to select employees and that the

positions were not opened up to a wider pool of applicants. The complainant was also concerned that considering all of the DIU personnel actions as a whole, he thought they were problematic and bordered on the line of being illegal.

Related to the DIU hiring processes, we reviewed Deputy Secretary of Defense Memorandum, "Hiring Flexibilities and Other Authorities for Strategic Capabilities Office and Defense Innovation Experimental Unit," July 14, 2017. The memorandum authorized certain hiring flexibilities "to support the critical hiring needs" for positions in the DIU. The memorandum also recognized that the DIU's hiring authorities were important to its mission to pursue innovative ways to sustain and advance military superiority for the 21st Century and improve business operations throughout the DoD. The memorandum recognized that the DIU's mission is:

further complicated by the need for acceleration to support the warfighter by experimenting with commercial technologies that provide solutions to military problems from companies that do not usually do business with the DoD and to support existing and future technology development by providing lower cost, strategic alternatives for shaping and countering emerging threats with game changing approaches that are both affordable and able to be rapidly fielded. This need can only be met by being able to hire the most technologically-advanced and experienced individuals who can work and communicate with their counterparts in industry and build new relationships with technology companies where the Department has experience challenges.

In addition, related to the DIU's hiring of certain scientific positions, the Director, Office of Personnel Management, issued Government-wide direct hiring authorities on October 11, 2018, for "a variety of Scientific, Technical, Engineering and Mathematics (STEM) positions, as well as Cybersecurity and related positions where we have identified severe shortages of candidates and/or critical hiring needs."

In our investigation of DIU hiring actions, we found that DIU officials used a variety of processes, including direct hiring authorities and competitive selection processes, to select and hire personnel. DIU officials also used military reservists and contractor employees to fill personnel needs in the organization.

Witness 1 told us that she was responsible for [REDACTED] (b)(6), (b)(7)(C) [REDACTED] (b)(6), (b)(7)(C). We asked Witness 1 about her concerns about the hiring practices, and she told us that the DIU did not use "standard practice" for all civilian hires within the same category. However, she also told us that she did not know of anything improper or any prohibited personnel practices within the DIU.

Witness 1 also told us that the DIU used the same direct hiring authorities that were available to other Government agencies, and there was nothing improper in those hiring actions. Additionally, she and [REDACTED] (b)(6), (b)(7)(C) described a process in which the DIU would consider and select candidates, forward selections to the Office of the Under Secretary of Defense for Research and Engineering (OUSD[R&E]) for review and processing, and forward selections to Washington Headquarters Services (WHS) for final approval.

The complainant provided the names of five individuals (including the complainant) who he believed were hired by circumventing processes and avoiding competition. The complainant told

us that all of the individuals were skilled and outstanding, and that the DIU hired good people. Our review of the five named individuals found that:

- one individual was not hired by the DIU;
- one individual (the complainant) was selected for a DIU position (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C); and
- the three remaining individuals were hired into competitive service positions that were processed through the USD(R&E) and WHS for approval—two of the individuals were hired using a direct hiring authority.

Witness 1 told us that she had no concerns regarding the DIU's use of the hiring authorities for the three individuals hired into the competitive service positions.

We interviewed (b)(6), (b)(7)(C) who was involved in reviewing and processing many of the DIU hiring actions. She told us that WHS was the hiring authority for DIU employees and the USD(R&E) provided human resources advisory and consultative services to the DIU. She told us that the DIU's use of the various direct and competitive hiring authorities was proper and appropriate.

We reviewed the circumstances regarding the hiring of the five individuals named by the complainant. Additionally, we asked witnesses and searched e-mails to find any other hiring actions in which Mr. Brown might have been involved. In total, we identified 28 candidates who were considered for work at the DIU; for these, Mr. Brown was involved in, provided input to, or was aware of the selection process.

We reviewed Mr. Brown's involvement in each of the actions related to the 28 candidates. Based on our review of information from witnesses and e-mails, we found no evidence to support the allegation that Mr. Brown sought to improperly influence DIU hiring selection processes. Additionally, we found no evidence to indicate that Mr. Brown took any action to favor friends or others with whom he might have a close personal relationship. Witnesses told us that DIU officials sought to hire individuals who they believed had appropriate expertise to help accomplish the mission.

Based on our review of Mr. Brown's involvement in the actions related to the 28 candidates, we found numerous examples in which Mr. Brown sought recommendations and input on merit-based factors before making decisions or recommendations on hiring selections. The following summaries from Mr. Brown's e-mails provide examples of his discussions with DIU employees regarding guidance in various hiring actions.

- In an e-mail requesting guidance from the complainant and Witness 1, Mr. Brown asked, "When can we start hiring on billets for FY20? Does this have to wait for the CR [continuing resolution] to end and the defense appropriations bill (as opposed to the NDAA)?"
- In an e-mail to Witness 1 exploring alternatives to potential hiring processes, Mr. Brown asked, "Maybe there is another program for industry fellows which I had heard we had special authority to work with. Can you research that and let me know?"

- In an e-mail to Witness 1 about a selection process, Mr. Brown wrote, “Thanks for getting together and charting a path here. Let’s see how it goes with the remaining interviews.”
- In response to Witness 1 about her advice on a hiring process, Mr. Brown wrote, “Thanks so much for this input—very welcome and timely. I agree with all of the points you make below.”

The following summaries provide examples of e-mails in which Mr. Brown sought and received input from DIU employees to coordinate potential selections, consider qualifications, and consider various candidates for a DIU position.

- When seeking information from a DIU manager regarding a potential selection, Mr. Brown wrote, “Can you send me any thoughts you have about [the applicant] including a recommendation of whether we should hire him? We’re trying to wrap up the process and I want to make sure I hear from you.”
- Regarding the same applicant, Mr. Brown wrote to another DIU employee, “Ordinarily, I would consider [the applicant’s] lack of cyber experience a knock out on this role. However, [a DIU employee] says he comes with strong leadership recommendations. I agree with [the DIU employee] that the next step would be interviews. Here, I’d like you to assess [the applicant’s] ability to learn cyber as well as his fit with DIU. However, I have to believe that anyone with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) can learn cyber.”

We asked Mr. Brown about the DIU selection processes. He told us that during his time serving as the director, the DIU had a workload that grew from 15 to 95 projects serving a variety of DoD Components. He also stated that the DIU used different hiring processes to fill the growing need for qualified talent to run the DIU projects. Mr. Brown told us that the DIU used different methods to find potential candidates, including using USA Jobs and referral networks. Mr. Brown told us that once a candidate was identified, the candidate was interviewed to ensure that the candidate was qualified, would work well in a team, and would be a cultural fit within the DIU. He said that the goal was to get the best-qualified person and hire that person quickly.

Mr. Brown told us that the processes to find and select candidates with technological subject matter expertise required the DIU to work quickly and do things differently instead of “just the way we’ve always done them.” Mr. Brown told us that the DIU’s culture was “very serious about integrity” and that his approach to filling positions in the DIU “does not give anyone permission to break rules or policies and I never was condoning a culture of rule breaking.”

Mr. Brown also stated:

I think one of the points that’s important here [is] I am not an expert in Government hiring. I think your question kind of draws that out and I would readily admit that. I relied on subject matter experts for that and have folks in HR [human resources], Legal, and General Counsel who do not report to me but to the Office of General Counsel and of course Financial Management So I’m relying on those experts to let me know if there’s anything that we’re doing that crosses any boundaries, pushes any limits, certainly if they thought we were breaking any laws.

Cash Award for Civilian Employee

The complaint alleged that a DIU Government employee improperly received a bonus for his work as a contractor employee after only 30 days of employment as a Government civilian employee. According to the complainant, the employee was in a unique situation because he transitioned from a contractor employee position supporting the DIU directly to a Government civilian employee position in the DIU.

We interviewed the DIU official responsible for reviewing and processing the award recommendation. She told us that an initial draft of the award recommendation included dates that the employee was working as a contractor employee. She told us that she raised her concerns with her supervisor but not with Mr. Brown. After she raised her concerns with her supervisor, she said that she adjusted the dates covered by the award to include only the time as a Government employee; however, the written justification for the award recommendation still included work the employee performed while a contractor employee.

We reviewed Mr. Brown's award recommendation to the WHS recommending that the employee receive a \$3,000 cash award for 30 days of work as a DIU Government employee. The award recommendation stated that when fully implemented, the employee's work had the potential to save the DoD up to \$5 billion annually. Mr. Brown's recommendation was approved and the employee received \$3,000.

The DIU investigation of the complaint included a review of this matter. The DIU report concluded that the employee was improperly given a cash award because the award citation included work that the employee completed while he was a contractor employee. Mr. Brown approved and closed the investigation on January 13, 2021. The employee returned the \$3,000 to the Defense Finance and Accounting Service on July 6, 2021.

Mr. Brown told us that after the award was approved, he learned that the employee completed part of the work covered by the award recommendation while a contractor employee. Mr. Brown was also informed that the employee was not eligible for the cash award, and the employee returned the cash award. Mr. Brown told us that he made it clear to DIU managers that they could only recommend performance awards for work performed as a Government employee.

Employment Verification Memorandum

The complaint alleged that Mr. Brown committed "bank fraud" by signing a memorandum for a DIU employee, improperly stating that the employee lived in (b)(6), (b)(7)(C) instead of (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), so the employee could obtain a better mortgage rate.

We found no evidence to support the allegation. We reviewed the documents associated with this issue, including a telework request from the DIU employee that reflected (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), as his regular worksite and an address in (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) as an alternate worksite. We also found a memorandum signed by Mr. Brown indicating that the employee worked at a duty station in (b)(6), (b)(7)(C). Mr. Brown told us that the memorandum verified the employee's employment status with the DIU.

Use of DIU Funds to Pay for a Service Member's Attendance at a Civilian University

The complaint alleged that the DIU used mission funds and the Defense Acquisition Workforce Development Account (DAWDA) to pay for a Service member to earn a PhD at a civilian

university.⁴ The complaint alleged that the DIU's mission would not improve because the Service member had no obligation to return to the DIU after earning the PhD.

The complainant told us that he and Witness 1 consulted a DoD official who provided oversight of this program. According to the complainant, the DoD official informed them he did not support the DIU decision to use DAWDA funds to pay for the civilian education, but that it did not violate a standard.

Three Service representatives who staff and review Service members' advanced degree requests told us that it was not uncommon for individual units to fund Service members' advanced education. The Service representatives also told us they were familiar with the Service member identified in the complaint and knew of nothing unusual about the path the DIU chose to fund the Service member's pursuit of a PhD at a civilian institution rather than at a Service academic institution.

Mr. Brown signed a memo to the Service indicating the Service member was filling a Service acquisition PhD quota and expressing the DIU's commitment to fund the education and his expectation that the Service member would return to the DIU after an intervening tour with the Service. Mr. Brown wrote to the Service, "DIU is committed to funding tuition costs ... up to a maximum of \$16,000 per year for the three year period of [the Service member's] degree. Funding to support this effort will be a combination of DAWDA and DIU O&M [operations and maintenance] funds."

When we asked Mr. Brown why he supported the Service member earning a PhD with only the expectation rather than an obligation to return to the DIU, Mr. Brown told us that the USD(R&E) recommended that the DIU take actions to increase the educational attainment of officers at DIU. According to Mr. Brown, the USD(R&E) said it would be a good thing if DIU could encourage more officers to get PhDs. Mr. Brown told us that a group of Service officers assigned to the DIU volunteered and ran a selection process within the DIU and selected the particular Service member. Mr. Brown told us that he did not participate in the selection process but signed a memorandum indicating his expectation that the Service member would return to the DIU after an intervening tour with the Service. When we asked Mr. Brown how the DIU would benefit from the PhD if the Service member declined to return to the DIU, Mr. Brown told us:

I would say I wasn't looking at this as narrowly as how does DIU benefit. I mean DIU was set up to benefit all of the military. Our mission is to provide commercial technology to any Service and work with all Services, and we had folks from Air Force, Navy, Army, Marines, and Space Force. So if we're furthering that mission to me that was in line with what we were doing and I wasn't viewing this narrowly as a contractual relationships with [the Service member] that you must come back to DIU for X months for the Defense Department for getting its value. He was a better educated ... officer and he went to another group within the military, frankly, and leverages his experience at DIU. That's a benefit also. And do we benefit because we train

⁴The FY 2008 National Defense Authorization Act established the Defense Acquisition Workforce Development Fund. The FY 2020 Act changed the word "Fund" to "Account." We refer to this program as DAWDA throughout this report.

According to the Office of the Under Secretary of Defense for Acquisition and Sustainment, Human Capital Initiatives, "Defense Acquisition Workforce Development Fund (DAWDF) Desk Operating Guide," August 2018, Congress established DAWDA to ensure the defense acquisition workforce has the capacity, in both personnel and skills, needed to (1) properly perform its mission; (2) provide appropriate oversight of contractor performance; and (3) ensure that the DoD receives the best value for the expenditure of public resources. DAWDA serves as a key human capital tool for acquisition leaders to strategically bolster defense acquisition workforce recruiting, training, development, retention, and recognition efforts.

those officers? Well, indirectly. If they're supporting our mission for where they go back to but there's nothing contractual about that.

Hiring and Paying for Contractor Employees

The complainant told us that he believed that DIU officials pressured contractor companies to hire individuals as employees while they were waiting to be hired as Government employees. The complainant also told us that Mr. Brown pressured two DIU contracting officer representatives (COR) to add funds to fixed-price contracts to increase the contractor employee salaries. According to the Defense Acquisition University description of COR duties, the key role of the COR is to observe, document, and communicate contractor performance to both the contracting officer and the contractor.

We interviewed the two CORs who served as the representatives between the DIU and the contractor companies and asked them about the allegations. Both CORs told us that the DIU never forced companies to hire specific employees. Both CORs told us that DIU employees would often provide the names or resumes of individuals who they thought might be qualified to fill a DIU contractor vacancy, and the CORs would forward that information to the contracting companies for their consideration.

We asked both CORs to describe the process to fill contractor vacancies. One COR told us that the contracting company used two sources to consider and fill job vacancies in the company. One source was through job announcements posted by the company. The other source was names and resumes forwarded by DIU employees through the COR to the company. The other COR told us that when they provided a name or a resume to a company, sometimes the company responded that the candidate did not meet their salary requirements and chose another candidate instead.

Both CORs told us that Mr. Brown did not tell them a contractor employee needed to make more money or to take any action they thought violated policies or regulations.

Mr. Brown told us, "Whether firms hired someone or not it was completely their decision. I never directed nor is it my knowledge that anyone directed the contracting firm to specifically hire someone." Mr. Brown told us that he had a "face-to-face" with the president of one of the contracting companies for a 5-minute meet and greet with him, "but it certainly wasn't a conversation about any substance." We asked Mr. Brown if anyone from the DIU contacted the contracting companies on his behalf and he told us, "Not at my direction."

Other Matters

In this section, we describe two matters of performance that we refer to the USD(R&E) for action.

The DIU's Investigation of the First Complaint

The complainant first e-mailed his concerns to DIU officials on May 28, 2020. The complaint included allegations of potential misconduct against Mr. Brown, a DoD senior official. However, the DIU officials failed to forward the allegations to our office as required by DoD Directive 5505.06.

Privacy Act Issue

While reviewing Mr. Brown's e-mail data, we noted instances in which Mr. Brown forwarded the status of various DIU hiring actions, including the names of different candidates, to

his leadership team and a DIU contractor employee. Such information is considered Privacy Act protected information that can be shared with other Government employees for official purposes, but sharing such information with the contractor employee was inappropriate because he was not a Government employee.

Mr. Brown told us that the DIU selected the contractor employee for a Government civilian position in (b)(6), (b)(7)(C). Mr. Brown told us that at the time he sent the e-mails, the DIU was in the process of extending an employment offer to the contractor employee. Mr. Brown told us that when he sent the hiring updates containing Privacy Act information, the contractor employee was “substantially doing the work [of his new position] except for (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) because that would be inherently governmental.” Mr. Brown also told us that:

people needed to understand where actions were as they tried to balance the resources with getting their job done. So I am a proponent of being as transparent as possible and wanting people to understand information as soon as it's available. So I'm forwarding [the e-mail] ... so that we could make sure we understood what was happening and to the extent that there were errors involved, we could correct those.

IV. OVERALL CONCLUSIONS

We did not substantiate the allegations against Mr. Brown. We reviewed the Joint Ethics Regulation, which requires that employees endeavor to act in the public's interest and avoid losing impartiality or appearing to lose impartiality in carrying out official duties. We concluded that Mr. Brown conducted his duties without partiality or favoritism, regularly consulted his staff, and did not direct or pressure his staff to violate standards regarding various personnel issues related to civilian, military, and contractor employees.

During Mr. Brown's tenure, the DIU expanded its workload significantly to provide services to various DoD Components. Consistent with the Deputy Secretary of Defense's memorandum authorizing hiring flexibilities for DIU and Office of Personnel Management guidance, Mr. Brown and his employees used a variety of direct and competitive processes to select and hire civilian employees. The DIU officials also used military reservists and contractor employees to fill personnel needs in the organization.

We found no information to indicate that DIU hiring actions violated a standard. While the complainant had concerns about the DIU's methods to select employees and thought they were problematic and bordered on the line of being illegal, he did not know of any hiring actions or selection processes that violated standards. Witness 1, who the complainant identified as having similar concerns, told us that she was responsible for (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), and she did not know of any DIU hiring actions that violated standards.

We examined the hiring actions the complainant identified and found no evidence that Mr. Brown sought to improperly influence DIU selection processes. We also reviewed Mr. Brown's e-mails to examine his involvement and actions related to 28 candidates who were considered for DIU positions. We found that Mr. Brown regularly sought guidance, input, advice, and recommendations from his staff about DIU selection processes.

Based on our review of the evidence, we found that DIU officials sought to hire individuals who they evaluated and believed had appropriate expertise to accomplish the mission. We found

no indication that Mr. Brown or anyone else took any action to favor friends or others with whom he might have a close personal relationship.

We reviewed the circumstances surrounding the cash award to a DIU Government employee after only 30 days of employment as a Government civilian. The DIU internal investigation reviewed this matter and concluded that the award citation included work that the employee completed while he was a contractor employee. The employee returned the cash award on July 6, 2021. We found no evidence that Mr. Brown committed misconduct when he recommended the employee for the cash award.

We found no support for the allegation that Mr. Brown improperly signed a document stating that an employee lived in (b)(6), (b)(7)(C). Mr. Brown's memorandum only indicated that the employee worked at a duty station in (b)(6), (b)(7)(C).

We reviewed the action committing the use of DIU funds to pay for a Service member's education at a civilian university. Mr. Brown's memorandum to the Service committing DIU support to fund the education included a statement that the DIU expected the Service member would return to the DIU after serving a tour of duty with the Service. Based on our review, we determined that Mr. Brown's decision did not violate a standard.

Finally, we found no evidence to support the allegation that Mr. Brown influenced or pressured DIU officials to improperly pressure contractor companies to hire individuals or increase their employees' salaries.

We address the remaining issues identified in the complaint in Appendix B.

V. RECOMMENDATIONS

We recommend that the USD(R&E) advise DIU officials of the requirement to notify the DoD OIG of allegations of senior official misconduct in accordance with DoD Directive 5505.06.

We recommend that DIU legal advisors provide appropriate guidance to DIU officials regarding the dissemination of Privacy Act protected information to contractor employees.

Appendix A: Standards

DOD 5500.07-R, "JOINT ETHICS REGULATION (JER)," AUGUST 30, 1993 (INCORPORATING CHANGES 1-7, NOVEMBER 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates title 5 Code of Federal Regulations (CFR) part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch" (1992), in its entirety.

Subpart A, "General Provisions," Section 2635.101

Section 2635.101, "Basic obligation of public service," states in paragraph (b)(8) that employees must act impartially and not give preferential treatment to any private organization or individual.

Chapter 12, "Ethical Conduct"

Section 4, "Ethical Values," states that ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties.

5 CFR SECTION 2638.102, "GOVERNMENT ETHICS RESPONSIBILITIES OF EMPLOYEES" (2022)

Consistent with the fundamental principle that public service is a public trust, every employee in the Executive branch plays a critical role in the Executive branch ethics program. As provided in 5 CFR part 2635 (1992), employees must endeavor to act at all times in the public's interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain, serve as good stewards of public resources, and comply with the requirements of government ethics laws and regulations, including any applicable financial disclosure requirements. Employees must refrain from participating in particular matters in which they have financial interests and, pursuant to section 2635.402 (f), should notify their supervisors or ethics officials when their official duties create the substantial likelihood of such conflicts of interest. Collectively, the charge of employees is to make ethical conduct the hallmark of Government service.

Appendix B: Other Matters

In this appendix, we discuss the remaining issues in the complaint not addressed in Section III. Based on our review of witness testimony, e-mails, and documents, we determined that the alleged conduct by Mr. Brown did not constitute misconduct or violate a standard. Accordingly, we did not address these allegations in Section III of this report. Some of the issues in the complaint did not involve alleged conduct by Mr. Brown and were addressed as part of the DIU investigation into the complaint.

PERSONNEL PRACTICES WITH CIVILIAN EMPLOYEES

Highly Qualified Expert Positions

The complainant asserted that the DIU misused Highly Qualified Expert (HQE) positions by extending HQE personnel beyond an initial 2-year commitment, and the DIU elected not to hire some individuals into an HQE status because the individuals did not want to accept an HQE position with the DIU. An individual's decision to decline an offer of employment as described in this allegation is a matter of discretion and not of misconduct. Furthermore, the relevant United States Code provision and DoD Instruction allow HQEs to serve up to 5 years. We found no evidence to indicate a potential violation of a standard in this matter.

Creating Billet Locations Based on Employee Desires

The complainant asserted that the DIU created positions in Washington, D.C.; Austin, Texas; and Boston, Massachusetts, for (b)(6), (b)(7)(C) because (b)(6), (b)(7)(C) did not want to move to California. The decision to approve alternate work locations for employees is generally considered a matter of discretion for supervisors based on the needs of the organization. We determined that Mr. Brown's alleged conduct did not violate a standard.

PERSONNEL PRACTICES WITH MILITARY PERSONNEL

Service Member's Move to (b)(6), (b)(7)(C)

The complainant asserted that the DIU approved a request to allow a Service member to move from his duty station at (b)(6), (b)(7)(C), and "depending on how this plays out, in my opinion he will be defrauding (b)(6), (b)(7)(C)." Based on the evidence we reviewed, we found that the Service member moved his family from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C), and the Service member was allowed to (b)(6), (b)(7)(C). We found no indication that the DIU paid for his travel to and from (b)(6), (b)(7)(C). Accordingly, we found no potential misconduct by DIU officials.

Gaming the System

The complaint alleged that the DIU gamed the hiring process when an individual rejected a position as a Government employee because the employee could make more money working for the DIU as a military reservist. The complaint also alleged that the DIU promised the employee a bonus from DAWDA funds for which the employee was ineligible.

According to the information we reviewed, the DIU officials initially believed that they could offer the bonus as part of the civilian hiring action but later learned that the position was not eligible for an incentive.

We found no evidence to indicate that the individual's rejection of a Government employee position violated any standard. Additionally, we found no evidence to indicate that DIU personnel violated a standard by processing a request to offer the individual an opportunity to work at the DIU as a military reservist.

Detailees Exceeding 2 Percent of DIU Employee Base

The complainant asserted that the DIU allowed active guard and reserve military detailees to work at the DIU without an approved memorandum of understanding. The complainant also said that some detailees were staying past 365 days without receiving an appropriate waiver of a requirement that the number of military detailees to a unit not exceed 2 percent of the total number of personnel working at the organization. Based on our review, we determined that both of these matters are part of the DoD's management of the military personnel system and not a matter of potential misconduct by Mr. Brown or any other DIU official.

DIU Snack Fund

The complainant reported a rumor that someone stole funds from the DIU informal office snack fund, and no reprimand was issued. The complainant did not allege any potential misconduct against Mr. Brown. We reviewed the DIU internal investigation into the snack fund specifically for any potential involvement by Mr. Brown and found none. Based on our review, it appears that the snack fund was an informal employee-sponsored fund managed by six employees and used to raise money for office plaques, awards, barbeques, and office parties from 2016 through 2019. Mr. Brown told us that the snack fund was "completely employee-managed, I had no visibility to this whatsoever." We found no allegation to indicate that Mr. Brown was involved in the management of this informal fund. Any decision whether to impose any punishment for the alleged mismanagement of funds is a matter of management discretion and not a matter of potential misconduct.

PERSONNEL PRACTICES WITH A CONTRACTOR EMPLOYEE

The complainant asserted that an individual hired as a contractor did not have the minimum security clearance required for the position and was not removed from employment because the individual was a friend of a DIU employee's spouse. Based on our review of the evidence, we determined that this matter was raised to the appropriate security official, and the contractor employee's application for a security clearance was eventually approved. We found no evidence that Mr. Brown was involved in this matter, and we determined that the evidence did not indicate potential misconduct by Mr. Brown.

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Report of Investigation:
Mr. Michael A. Brown



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