


NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

Subj: SENIOR OFFICIAL CASE 201103025; ALLEGED MISMANAGEMENT BY
VADM DANIEL T. OLIVER (RET), PRESIDENT, NAVAL POSTGRADUATE
SCHOOL




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Office of the Naval Inspector General

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Preliminary Statement

1. The Naval Inspector General (IG) initiated this investigation in November 2011 to address complaints against VADM Daniel T. Oliver (Ret), President, Naval Postgraduate School (NPS) and Dr. Leonard A. Ferrari, Executive Vice President and Provost, NPS. The complaints alleged various acts of waste and mismanagement of NPS. This report addresses conduct of the President, NPS, who we will refer to as "President Oliver." The conduct of the Provost is discussed in a second report. Follow-on reports will address the conduct of others at NPS we do not consider to be senior officials.

2. The complaints alleged NPS leadership was not properly addressing the NPS statutory mission to provide advanced education and research opportunities for Naval officers; that NPS leadership was not adhering to Federal hiring practices; that NPS leadership was authorizing excessive salaries for staff and faculty; that President Oliver, Dr. Ferrari and other NPS staff and faculty generally conducted excessive and unnecessary official travel; that NPS staff and faculty used their official positions for personal gain; and that President Oliver and Dr. Ferrari failed to provide adequate leadership.

3. Our initial interviews of NPS staff and faculty developed evidence that tended to support the original allegations and suggested violations of other laws or regulations. Based on the interviews, we increased the scope of the investigation to include an examination of the process used to establish the new Vice President for Finance and Administration (VPFA) and recruit and hire someone to fill the position. We also examined the process of receiving gifts from the Naval Postgraduate School Foundation, which we will refer to as the Foundation.

4. After we briefed the Under Secretary of the Navy on our preliminary findings, he directed us to lead a comprehensive inspection of NPS to include an examination of mission; fiscal

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management; personnel management; academic integrity; resource management; composition and recruiting of the student body; and safety compliance. The inspection effort addressed the areas of mismanagement raised in the original complaints and other areas of concern identified during our investigation. Consequently, in this report we focus on President Oliver's decisions pertaining to the new VPFA position, the receipt of gifts from the Foundation, and his overseas travel. Because the October 22, 2011, IG inspection report contains information about the NPS gift program that some readers may find helpful to review before reading allegation five in this report, we include that material in Appendix A of this report.

Summary of Allegations and Conclusions

5. This report addresses the following allegations:

Allegation One: That President Oliver directed that
FOIA b6 & b7c be hired as a contractor employee to circumvent Federal salary limits in violation of the Federal Acquisition Regulation (FAR) 37.203, [Advisory and Assistance Services] Policy.

Allegation Two: That President Oliver allowed the Executive Director of the Foundation to interview candidates for the position of VPFA, an inherently governmental function that must be performed by Federal employees, in violation of Office of Management and Budget (OMB), Office of Federal Procurement Policy, letter 11-01 of September 12, 2011.

Allegation Three: That President Oliver allowed
FOIA b6 & b7c while a contractor employee, to perform inherently governmental functions and personal services in violation FAR 7.5, Inherently Governmental Functions, and FAR 37.104, Personal Services Contracts.

Allegation Four: That President Oliver directed the VPFA to supervise the NPS Comptroller, placing the Comptroller in a position more than one level subordinate to President Oliver, in violation SECNAVINST 7000.27A, Comptroller Organizations.

Allegation Five: That President Oliver solicited and accepted gifts from the Foundation on behalf of the U.S. Navy, in violation of 10 United States Code (USC) 2601, General Gift Funds; SECNAVINST 4001.2J, Acceptance of Gifts; OPNAVINST 4001.1F, Acceptance of Gifts;

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NAVPGSCOLINST 4001.1E, Policies and Procedures for Gift Administration, Gift Acceptance and Event Sponsorship for the Naval Postgraduate School; and NAVPGSCOLINST 4001.2B, Policy on President's Gift Fund.

Allegation Six: That President Oliver engaged in excessive and wasteful travel to overseas locations in violation of the Joint Travel Regulations (JTR), Volume 2, Part A, Section C2000, Obligation to Exercise Prudence in Travel.

6. We substantiate allegations one through four, pertaining to the new VPFA position. We determined that President Oliver allowed FOIA b6 & b7c, the FOIA b6 & b7c of the Foundation, to participate in the rating panel interviews of applicants for the VPFA position and to recommend the selection of a specific applicant, FOIA b6 & b7c. FOIA b6 & b7c declined the position because she considered the offered annual compensation, \$162,000 per year and a one-time recruitment bonus of \$25,000, insufficient. President Oliver then arranged for a contractor to hire FOIA b6 & b7c in order that she could work at NPS under an existing support services contract held by that company. The contractor offered FOIA b6 & b7c a one year contract at \$275,000 per year, which she accepted, and the contractor received a \$439,318 task order under its existing NPS support contract. While performing under the contract, FOIA b6 & b7c essentially functioned as the new NPS VPFA. When FOIA b6 & b7c eventually accepted government employment as the VPFA, the Comptroller reported to her rather than to President Oliver. Taken as a whole, we conclude President Oliver's conduct amounts to waste and gross mismanagement.

7. We also substantiate allegation five, pertaining to NPS practices concerning gifts from the Foundation. Our report details how, after properly processing a Foundation gift of \$50,000 offered for "recruitment and retention" efforts in late 2007, President Oliver agreed with a proposal that, instead of offering another gift of \$50,000 in late 2008, the Foundation would retain the funds in its own account and provide money in increments as requested by NPS personnel upon President Oliver's approval. This practice usually entailed NPS personnel asking the Foundation to directly reimburse them for out-of-pocket expenses rather than making those employees seek reimbursement from an NPS gift fund as required by the NPS gift instruction. The evidence establishes Foundation and NPS personnel recommended this course of action to President Oliver for convenience and to enable use of those funds for some purposes that might not be approved if the money was held in the NPS account.

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8. While we only conclude these practices violated the applicable gift instructions, including the NPS gift instruction provision that expressly forbids reimbursement from private parties, we note that a reasonable person could consider each individual transaction resulting from this decision to constitute a solicitation of funds for the Department of the Navy (DON), in violation of the Department of Defense Financial Management Regulation, use of official position for personal gain, in violation of the Joint Ethics Regulation, or an illegal supplementation of the recipient's salary under 18 USC 209.¹

9. We do not substantiate allegation six, finding instead that each trip President Oliver took had a reasonable connection to the performance of his official duties.

10. President Oliver's conduct, summarized in the preceding paragraphs, is particularly egregious in light of the fact that he has spent almost 34 years of his life in the naval service, including nearly 5½ years of distinguished service as a flag officer. During his career as a naval officer, President Oliver regularly participated in ethics training, was aware of those rules, and held others accountable for complying with them. During his tenure as NPS President he failed to comport himself in accordance with those rules.

Background

11. Authority for NPS is set out in 10 USC 7041, United States Postgraduate School, Function. Section 7041 states:

The primary function [of NPS] is to provide advanced instruction and professional and technical education and research opportunities for commissioned officers of the naval service in –

- (1) their practical and theoretical duties;
- (2) the science, physics, and systems engineering of current and future naval warfare doctrine, operations, and systems; and
- (3) the integration of naval operations and systems into joint, combined, and multinational operations.

12. SECNAVINST 1524.2B, Policies Concerning the Naval Postgraduate School, provides further guidance on the mission

¹ We will address these issues in the other reports, but note here that the cognizant US Attorney has declined to prosecute any NPS employees.

and functions of NPS. It states, "The NPS exists for the sole purpose of increasing the combat effectiveness of the Navy and Marine Corps."

13. The NPS mission statement set forth on its website and in Command Briefings to visiting dignitaries, says:

NPS provides high-quality, relevant and unique advanced education and research programs that increase the combat effectiveness of the Naval Services, other Armed Forces of the U.S. and our partners, to enhance our national security.

14. On April 1, 2007, the Secretary of the Navy (SECNAV) appointed VADM Daniel T. Oliver (Ret) as the NPS President. Qualifications for the President are stated in 10 USC 7042, United States Postgraduate School, President; assistants. The President can be an active duty officer of the Navy or Marine Corps or a retired Navy or Marine Corps officer.

15. President Oliver was commissioned in 1966 through the Naval Reserve Officer Training Corps program at the University of Virginia. He retired from active duty in February 2000.

16. The Foundation is a nonprofit organization exempt from Federal income taxation under section 501(c)(3) of the Internal Revenue Code. Its primary mission is to support the students, faculty and staff of the NPS. The Foundation is a non-Federal entity, separate and distinct from NPS.

17. Our 2012 NPS Command Inspection report concludes the overarching problem at NPS "is that NPS chooses not to follow governing Navy rules, regulations and laws in the conduct of the majority of its programs, because it will not reconcile its academic philosophies and ideals with governing standards." In the area of mission performance, we found that "[a] consistent theme from the highest level of NPS leadership to the lower ranks of the faculty was that NPS cannot operate as a Navy command (and adhere to DON programs and procedures) because doing so would be in direct conflict with the business practices that are necessary for operating a university." This investigation report details specific examples of President Oliver's decisions to break the rules. While he may have perceived doing so would achieve the "greater good" of making NPS a world class research university, we reject this justification for rule-breaking.

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Allegation One: Circumvention of Federal Salary Limitations

That President Oliver directed that FOIA b6 & b7c be hired as a contractor employee to circumvent Federal salary limits in violation of the Federal Acquisition Regulation (FAR) 37.203, [Advisory and Assistance Services] Policy.

Applicable Standard

18. FAR Subpart 37.2, Advisory and Assistance Services, paragraph 37.203(c)(2), states in part:

Advisory and assistance services shall not be . . .
[u]sed to bypass or undermine personnel ceilings, pay
limitations, or competitive employment procedures. . . .

Findings of Fact

19. In April 2008, LMI Government Consulting reported to NPS the results of a study of the NPS organizational structure. NPS commissioned the study to determine the optimal organization required to effectively accomplish its dual DON and educational missions. The study focused on direct reports of the NPS President and Provost. One of the study's findings was that "NPS needs greater clarity in its financial and budget processes," and it recommended creating the position of Vice President for Finance and Administration (VPFA), reporting directly to the Executive Officers (President and Provost). According to the LMI study, this new official would serve as the chief financial, administrative and logistics officer, and would provide a strategic view of all NPS financial matters, including contracting, procurement and invoicing.

20. In response to the LMI analysis, NPS established the position of VPFA; and on January 9, 2009, advertised the newly-established position in *The Chronicle of Higher Education*, as was standard procedure in an academic environment. The posted announcement described the position as follows:

As the chief financial officer, directs and oversees the institution's business and other support functions, to include institutional budget submissions, Business Policies, Comptroller's Office and other treasury functions (Payroll, General Accounting, Cashiering, and Purchasing). Ensures that business transactions and policies and procedures meet the University's short- and long-term goals and objectives. Responsibilities of this position include

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development and oversight of financial data systems, and reporting tools for effective analysis; and coordination of internal/external information reporting.

21. The announcement stated that the VPFA responsibilities included overseeing submission of the Program Objective Memorandum (POM), finance, and administrative service areas. Also included were interacting with the NPS community and stakeholders regarding financial or strategic plans/policies; collaborating with the NPS President and other senior leaders to establish policy, developing budgetary models and setting priorities; reviewing NPS major contractual obligations; and overseeing administrative services.

22. The NPS Search Committee, chaired by FOIA b6 & b7c
FOIA b6 & b7c, reviewed the applications received, scheduled and conducted interviews of the prospective selectee and ultimately recommended FOIA b6 & b7c to the President. By letter and telephone conversation, both dated April 14, 2009, President Oliver offered FOIA b6 & b7c the position with an annual salary of \$162,000 and a one-time recruitment bonus of \$25,000. The Federal salary cap for senior-level civilians in April 2009 was \$162,900 per year.

23. FOIA b6 & b7c testified that she learned of the NPS position vacancy in a telephone call from FOIA b6 & b7c during the December 2008-January 2009 timeframe. At the time, FOIA b6 & b7c was employed at California State University (CSU). She testified that she had been recommended to FOIA b6 & b7c, who then asked her to apply for the position. FOIA b6 & b7c stated that she was not previously acquainted with FOIA b6 & b7c. FOIA b6 & b7c said that after participating in the selection process, NPS offered her the position. FOIA b6 & b7c testified that she declined the position because the compensation offered was insufficient and did not include a relocation allowance.

24. FOIA b6 & b7c testified that after she declined the civil service position, she had several discussions with President Oliver and he suggested that she work at NPS as a contractor employee. According to FOIA b6 & b7c he also stated at that time his expectation that she would convert to the VPFA position at the end of the contract period.

25. President Oliver testified that at the time she was hired as a contractor employee, it was his hope that FOIA b6 & b7c would

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eventually accept the Federal position. He stated that he conveyed this hope to her, but he was unsure if it would occur.

26. In an e-mail dated October 15, 2009, FOIA b6 & b7c wrote to President Oliver that FOIA b6 & b7c "mentioned that she was considering transition to [Federal] employment sooner than originally planned."

27. FOIA b6 & b7c, FOIA b6 & b7c, testified that in October 2009, at the time of these events, FOIA b6 & b7c, managed all NPS contract matters and liaised with Fleet and Industrial Supply Center (FISC) San Diego in their execution. FOIA b6 & b7c testified that President Oliver stated his intent to bring FOIA b6 & b7c to NPS as a contractor employee and directed FOIA b6 & b7c to "make it happen." FOIA b6 & b7c said that President Oliver provided the contract parameters; that is, the intended contractor employee was FOIA b6 & b7c; the compensation was to be \$250,000 per year; and the award date was to be expedited. FOIA b6 & b7c stated that FOIA b6 & b7c then wrote the Statement of Work (SOW), based upon President Oliver's input.

28. FOIA b6 & b7c testified that President Oliver did not direct FOIA b6 & b7c to specify Digital Consulting Services (DCS) as FOIA b6 & b7c intended employer, but that FOIA b6 & b7c made the determination to use an existing contract NPS had with DCS. Contract N00244-08-D-0039, awarded to DCS on September 25, 2008, included one base year and two option-years for "instructional, administrative and program support services for academic programs at NPS Monterey." FOIA b6 & b7c testified that FOIA b6 & b7c advised DCS personnel of the pending SOW and provided the company with FOIA b6 & b7c telephone number, requesting that they contact her.

29. In e-mail correspondence between FOIA b6 & b7c, FOIA b6 & b7c, and FOIA b6 & b7c on May 14, 2009, FOIA b6 & b7c wrote that DCS had commenced the process to hire FOIA b6 & b7c and FOIA b6 & b7c indicated her salary from DCS needed to be \$275,000, which would include a relocation allowance of \$25,000.

30. FOIA b6 & b7c testified that upon reviewing the SOW, FOIA b6 & b7c, FOIA b6 & b7c, FISC San Diego, questioned it.² FOIA b6 & b7c stated that FOIA b6 & b7c was concerned that NPS was targeting a specific individual, and they discussed whether a sole-source contract with FOIA b6 & b7c would be more appropriate. FOIA b6 & b7c stated that a sole-source contract was not feasible

² FISC San Diego was renamed NAVSUP Fleet Logistics Center (FLC) San Diego as of July 1, 2011.

because FOIA b6 & b7c did not possess "unique knowledge/capability." FOIA b6 & b7c testified that she discussed with President Oliver the concerns raised by FOIA b6 & b7c and that President Oliver indicated he was committed to bringing FOIA b6 & b7c to NPS.

31. Between May 14 and May 22, 2009, the following e-mail exchanges took place:

- May 14, 2009 - FOIA b6 & b7c informed FOIA b6 & b7c that DCS had contacted her, as requested by FOIA b6 & b7c, and discussed FOIA b6 & b7c desired salary.
- May 15, 2009 - FOIA b6 & b7c advised FOIA b6 & b7c that she had notified CSU of her imminent resignation although she did not yet have a signed contract.
- May 15, 2009 - FOIA b6 & b7c requested President Oliver to direct FOIA b6 & b7c to expedite the contract in view of FOIA b6 & b7c notifying her CSU employers, and President Oliver did so by forwarding FOIA b6 & b7c e-mail to FOIA b6 & b7c
- May 18, 2009 - FOIA b6 & b7c forwarded the draft SOW to President Oliver, based upon his previous input.
- May 18, 2009 - President Oliver suggested revising the SOW to include preparation for the upcoming IG inspection.
- May 19, 2009 - FOIA b6 & b7c forwarded to President Oliver DCS Quote #6575 for the SOW and advised him that an award through FISC San Diego was expected within three days. The DCS quoted price was \$455,844.³
- May 20, 2009 - FOIA b6 & b7c advised FOIA b6 & b7c that a cost-benefit analysis was required. She opined that the proposed services were "high-end support" and wrote, "This looks very bad in times of recession. . . ." She also expressed concern that, contrary to normal contracting practice, a specific individual was being named. FOIA b6 & b7c wrote, "This looks very bad in times of recession. . . ."

³ This quote did not break out the actual salary and relocation expenses that DCS discussed with FOIA b6 & b7c .

- May 21, 2009 - FOIA b6 & b7c further explained the need for written justification writing, "[Y]ou can pass this on to the President, even legally supportable decisions make very bad press. In my opinion as a 30+ year Government attorney, this would not read well in the Washington Post."
- May 22, 2009 - In response to FOIA b6 & b7c e-mail, FOIA b6 & b7c drafted for President Oliver's approval the requested justification for the high cost approval and forwarded it to FISC San Diego with his concurrence.

32. On May 22, 2009, President Oliver signed a Memorandum for the Record that provided the requested justification. The memorandum stated that the proposed Task Order was a "natural follow-on" to the organizational studies conducted at NPS, in an effort to balance the school's academic and DON environments. The memorandum said that the cost was justified by the improved organization and by long-term cost savings to the government.

33. FOIA b6 & b7c testified that she identified the services being procured as advisory and assistance, which is permissible under the FAR. One of her concerns was that there appeared to be personal services included, as evidenced by the fact that the contractor employee would be given the title of "Assistant to the President" of NPS. She was also concerned that the cost did not appear to be fair and reasonable. FOIA b6 & b7c testified that she worked with FOIA b6 & b7c to address these shortcomings. In the final iteration of the SOW, she said, the position title and inherently governmental functions were removed; the cost was found to be within the GSA schedule for consulting services; and she was then able to approve the SOW.

34. On May 22, 2009, FISC San Diego issued Task Order 0086 against DCS Contract N00244-08-D-0039 on behalf of NPS. The total cost of the Task Order was \$439,318.

35. Task Order 0086 required the contractor to review and evaluate nine major areas at NPS. These areas were: (1) the structure of the VPFA organization;⁴ (2) facilities and administrative costs; (3) tuition; (4) the planning, programming, budgeting and execution process; (5) ramifications of establishing Naval Support Activity Monterey Bay; (6) Government-mandated travel processes; (7) KUALI Financial System implementation; (8) academic budgeting process; and (9) preparation for the 2009 IG inspection. The contractor employee was required to deliver "written, executive-level

⁴ This office did not exist at the time of contract execution.

briefings, reports, recommendations, and white papers." Performance was to be on-site at NPS, using government-furnished office space and equipment, in direct support of the NPS President; and the contractor employee was to observe normal NPS working hours.

36. On May 26, 2009, DCS offered FOIA b6 & b7c employment as a Subject Matter Expert Principal at NPS, with a performance period from July 6, 2009, through July 5, 2010, and an annual salary of \$275,000.⁵ She accepted the offer on June 15, 2009.

37. President Oliver testified that he created the VPFA position after the LMI study recommended that NPS install a Chief Financial Officer or Chief Administrative and Finance Officer (CAFO). He learned of FOIA b6 & b7c as a result of the search conducted to fill the position. President Oliver testified that FOIA b6 & b7c was clearly the best-qualified among the candidates, and he offered her the job. However, he stated, she declined the offer for reasons unknown to him at the time. He said:

I don't know [why she declined]. . . . I never could quite figure out, you know, what her thing was, but she told me a couple weeks ago. She said it was housing. [When she initially declined, I asked her why, but] she was evasive. [I]n fact, I had thought it had something to do with the terms of her retirement from the state system or something. I don't know. I never was real clear on it, to be perfectly honest. [M]aybe a week ago . . . the question came out. I just thought, 'I never did find out.' And I said, FOIA b6 & b7c, how come you didn't come on in the first place?' And she said, 'You couldn't offer me housing. You couldn't offer me a housing allowance or couldn't pay my move,' or something, something like that.

38. President Oliver stated that he did not offer the position to the next best-qualified candidate because FOIA b6 & b7c was far better than the others. He said, "I had interviewed the next best qualified, and it just didn't float my boat."

39. President Oliver testified that FOIA b6 & b7c subsequently suggested he bring FOIA b6 & b7c aboard as a contractor, to be

⁵ DCS letter to FOIA b6 & b7c dated May 26, 2009.

converted to Federal service later. FOIA b6 & b7c told us she did not recall making this suggestion to President Oliver. However, FOIA b6 & b7c also told us that she too had been a contractor employee assigned to NPS before she was converted to Federal service without further competition.

40. President Oliver testified that he did not consult with NPS Counsel or the Human Resources Officer about the proposed contracting action, but he met with FOIA b6 & b7c and FOIA b6 & b7c NPS FOIA b6 & b7c to determine how NPS could "make this work." He said FOIA b6 & b7c only concern was that as a contractor, FOIA b6 & b7c should not be assigned to supervise any government employee; FOIA b6 & b7c advised him that contracting with FOIA b6 & b7c had to be properly approved and processed by FISC San Diego. Upon receiving this information, President Oliver discussed the option of a contractor employee position with FOIA b6 & b7c, and subsequently instructed FOIA b6 & b7c to initiate the contracting process.

41. Regarding FOIA b6 & b7c concerns about the Task Order, President Oliver testified that someone may have said to him, "San Diego is being grumpy," but he had not seen the e-mails detailing FOIA b6 & b7c concerns. He stated that he was not concerned about the cost of the task order since he had been "saving" the salaries of two senior-level employees who had left NPS two years earlier.

42. President Oliver testified that he was "determined to get FOIA b6 & b7c on board," but that he did not personally direct FOIA b6 & b7c to DCS. He stated that FOIA b6 & b7c had done so prior to his knowledge of it. This is contrary to FOIA b6 & b7c recollection. FOIA b6 & b7c testified that President Oliver had advised her to seek employment with DCS and that she did so with the understanding that she would be assigned to NPS.

43. Regarding when he determined that these contracted services were required, President Oliver stated:

[M]y whole thought process going into this was, you know, I've got a really talented person here and once I settled on the compromise thing [having FOIA b6 & b7c hired as a contractor employee], I thought she can do some good; she can flesh this out; we can move this ball down the road. And if I can get her, I think what's going to happen, my thinking is she's going to find that she really likes it here, she's working with good people, it's an important job, and she's going to be really frustrated as a contractor because there's

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so much she can't really do. And sure enough, that's what happened, I think.

44. He further testified:

I was very frustrated, you know, not being able to fill this [VPFA] position. And so at least I could get started on some of the background work by getting somebody on as a contractor that knew, was qualified to understand, kind of how to fix what I perceived to be wrong. So to me, yeah, it was pricey, but it was an investment that I thought at the time we could afford. . . . [S]o when this CAFO position was created, to me it was notionally the same position as that one. And so even though she wasn't filling that role here as a contractor, she was getting a start on the work that needed to be done to eventually get that position in place.

Analysis

45. Pursuant to FAR 37.203, contracted advisory and assistance services may not be used to bypass or undermine Federal pay limitations. In January 2009, NPS began the search to fill a civil service position, VPFA. In April 2009, the search culminated in President Oliver offering the civil service job to ^{FOIA b6 & b7c} ^{FOIA b6 & b7c} was neither a civil servant nor a government contractor employee at the time. ^{FOIA b6 & b7c} declined the position because of inadequate compensation.

46. Despite her declination, President Oliver testified that he "was determined" to bring ^{FOIA b6 & b7c} to NPS. He then took the necessary steps to bring her to NPS as a contractor employee at a salary acceptable to her. President Oliver's initial salary offer (for the Federal position) was \$162,000 per year, plus a one-time recruitment bonus of \$25,000. When the Task Order for ^{FOIA b6 & b7c} services was finalized, her salary was set at \$275,000, the salary amount that she requested of DCS, for the first performance year – \$87,100 above the Federal salary limit in effect at the time. President Oliver was made aware of the contractor's price quote, and he signed the justification for it that was forwarded to FISC San Diego.

47. President Oliver testified that when ^{FOIA b6 & b7c} declined the civil service position, he was not aware that the offered salary was the reason. We found that the evidence did not support his testimony regarding this issue. President Oliver personally offered a Federal salary of \$162,000, both in a

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letter and in at least one discussion with FOIA b6 & b7c . After FOIA b6 & b7c declined, President Oliver proceeded to contract for her services, and he was advised of the contractor's approximately \$450,000 price quote. He testified that the cost of the contract did not concern him since it was offset by the unused salaries of unfilled senior civilian positions.⁶

48. It is reasonable to conclude that President Oliver could not have addressed FOIA b6 & b7c concerns without knowing what they were, and the fact that he initiated action to acquire her services through contract, with the salary FOIA b6 & b7c specified, belies his assertion. In fact, FOIA b6 & b7c testified that it was President Oliver who specified the parameters of the Task Order, including FOIA b6 & b7c salary. We find that in specifying that FOIA b6 & b7c be engaged as a contractor employee as an alternative to direct Federal hire, at her desired salary, President Oliver circumvented Federal salary and incentive limitations in violation of FAR 37.203.

Conclusion

49. The allegation that President Oliver directed that FOIA b6 & b7c be hired as a contractor employee to circumvent Federal salary limits in violation of the Federal Acquisition Regulation (FAR) 37.203, [Advisory and Assistance Services] Policy is substantiated.

Allegation Two: Permitting Private Entity to Participate in Selection of Federal Employee

That President Oliver allowed the Executive Director of the Foundation to interview candidates for the position of VPFA, an inherently governmental function that must be performed by Federal employees, in violation of Office of Management and Budget (OMB), Office of Federal Procurement Policy, letter 11-01 of September 12, 2011.

Applicable Standards

50. OMB, Office of Federal Procurement Policy (OFPP), Policy Letter 11-01 establishes policy addressing the performance of inherently governmental function in the Executive Branch addressing. Section 3 of OFPP Policy Letter 11-01 states, in part:

⁶ President Oliver focused only on the availability of funds rather than whether he could obtain more reasonably-priced services through the hiring of an alternate candidate.

"Inherently governmental function," as defined in section 5 of the Federal Activities Inventory Reform Act, Public Law 105-270, means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

51. Appendix A of OFPP Policy Letter 11-01 contains an illustrative list of functions considered to be inherently governmental. It includes, at paragraph 10, the "selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment."

Findings of Fact

52. An NPS document, entitled "DRAFT Interview/Meeting Schedule for VP, Finance and Administration [VPFA]", indicates that candidates for the position were brought to NPS for two days of interviews. According to the document, an interview was scheduled with FOIA b6 & b7c, the Foundation FOIA b6 & b7c, from 4:00 to 4:50 p.m. on the first day [no dates given].

53. FOIA b6 & b7c testified that FOIA b6 & b7c participated in her interview during the process to fill the position in 2009. She testified that the interview was held at in the Hermann Hall Peacock Room at NPS. FOIA b6 & b7c said that FOIA b6 & b7c was a part of the group of NPS staff members conducting the interview.

54. FOIA b6 & b7c testified that he participated in the interviews of three or four candidates for the VPFA position at that time. FOIA b6 & b7c was asked to describe the process by which he was included in the interviews. He stated that he was asked by FOIA b6 & b7c, the head of the NPS Search Committee, to sit on the panel. FOIA b6 & b7c said that during the interviews, he and others on the interview panel asked a variety of questions of the candidates. Afterward, he said, he provided his opinion concerning the candidates' suitability for the position. FOIA b6 & b7c testified that FOIA b6 & b7c impressed him favorably and he recommended her as the best among the candidates.

55. Regarding FOIA b6 & b7c participating in employment interviews for the VPFA position, President Oliver testified as follows:

I don't remember that. If you asked me if he did, I wouldn't be able to recall whether he did or not. [Being told that he participated,] I would say that is probably not a bad thing considering what we were hiring her for . . . Chief Financial Officer. I think [it was] an opportunity to inform her of what the

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Foundation does and the relationship they have with the school. I mean . . . the private funding is definitely a part of the financial structure of this institution, and . . . I would think that we would want her to be aware that there was a Foundation and what they do and that kind of stuff.

56. President Oliver further stated:

[T]his is probably on me because my idea was not that [he] make any recommendations, but that anybody coming in here that's going to take the position of either CAFO or Provost needs to know who the Foundation is, what they do, . . . what their involvement [is].⁷ It's a part of life around here.

Analysis

57. In accordance with OFPP Policy Letter 11-01, the selection or non-selection of individuals for Government employment is an inherently Government functional requiring performance by a Federal employee. According to both FOIA b6 & b7c and FOIA b6 & b7c, FOIA b6 & b7c participated in the interviews to fill the VPFA position at NPS.

58. President Oliver testified that his intent in allowing FOIA b6 & b7c involvement was to familiarize the candidates with the Foundation's role in NPS' financial structure. He stated that he believed this was prudent considering that the selectee would be performing as the finance officer.

59. Both FOIA b6 & b7c and FOIA b6 & b7c testified that FOIA b6 & b7c questioned the candidates and provided NPS with his recommendation for selection. As FOIA b6 & b7c of the Foundation, a non-Federal entity, FOIA b6 & b7c role in the selection position violated this policy.

Conclusion

60. The allegation that President Oliver allowed the FOIA b6 & b7c FOIA b6 & b7c of the Foundation to interview candidates for the position of VPFA, an inherently governmental function that must be performed by Federal employees, in violation of Office of Management and Budget (OMB), Office of Federal Procurement Policy, letter 11-01 of September 12, 2011, is substantiated.

⁷ FOIA b6 & b7c stated that FOIA b6 & b7c, FOIA b6 & b7c Foundation, participated in interviews of candidates in 2012 to fill the Provost position.

**Allegation Three: Permitting Contractor Employee to Perform
Inherently Governmental Functions**

That President Oliver allowed ^{FOIA b6 & b7c} , while a contractor employee, to perform inherently governmental functions and personal services in violation FAR 7.5, Inherently Governmental Functions, and FAR 37.104, Personal Services Contracts

Applicable Standards

61. FAR Subpart 7.5, Inherently Governmental Functions, Section 503, states that contracts shall not be used for the performance of inherently governmental functions, and lists among inherently governmental functions the direction and control of Federal employees; the selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment; determining what supplies or services are to be acquired by the Government; and the determination of budget policy, guidance and strategy.

62. FAR Subpart 37.1, Section 104, Personal services contracts, prohibits agencies from awarding personal services contracts unless specifically authorized by statute to do so. It further states:

A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract. . . .

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who

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is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the government exercise relatively continuous supervision and control over the contractor personnel performing the contract. . . .

63. FAR 37.104 further describes the elements to use as a guide in determining whether a contract constitutes personal services. The elements include: performance on-site; use of Government-furnished equipment and tools; services applied directly to the activity's integral function; comparable services performed by Government employees at other, similar activities; expectation that the services will be required beyond one year; and reasonable requirement of Government direction of the contractor employee because of the nature of the services or the manner they are provided.

Findings of Fact

64. The NPS organization chart dated June 1, 2009, listed FOIA b6 & b7c as a Special Assistant to the President. It included no indication of her status as a contractor.

65. On June 4, 2009, President Oliver announced to the NPS community FOIA b6 & b7c expected arrival on campus. President Oliver's announcement did not mention DCS or identify FOIA b6 & b7c as a contractor employee. The announcement stated:

I am pleased to announce that FOIA b6 & b7c will join the executive leadership team on July 6, 2009 as Special Advisor to the Office of the President. . . . In her capacity at NPS and on behalf of my office, FOIA b6 & b7c will be spearheading a number of initiatives for improving business and administrative processes. FOIA b6 & b7c experience and financial acumen will be of significant value as we move forward in implementing our strategic plan and improving our administrative operations in support of our ambitious academic plans. I encourage each of you to collaborate with and welcome FOIA b6 & b7c to our campus.

66. President Oliver explained his rationale for not mentioning that FOIA b6 & b7c was a DCS employee in his announcement. He

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stated that he wanted to be inclusive and did not think it was important to identify her as a contractor. He added that he "could probably not pass a rigorous quiz today on which current NPS employees are government and which are contractors."

67. FOIA b6 & b7c testified that she learned of FOIA b6 & b7c inclusion in the NPS organization chart sometime in June 2009. She stated that she was on-site at NPS to conduct ethics training and that FOIA b6 & b7c brought it to her attention. FOIA b6 & b7c stated that FOIA b6 & b7c should have been identified as a contractor employee in the chart. She said that upon her recommendation, NPS removed FOIA b6 & b7c name from the organization chart.⁸

68. FOIA b6 & b7c, Educational Technician, a civil service employee, is the FOIA b6 & b7c to FOIA b6 & b7c He testified that he was detailed to the position when FOIA b6 & b7c arrived as a contractor employee in July 2009. He stated that in September 2009, he was permanently assigned to the position.

69. FOIA b6 & b7c said that his duties assisting FOIA b6 & b7c while she was a contractor employee were similar to his current duties – managing FOIA b6 & b7c calendar, greeting her visitors, fielding requests from others regarding her availability, arranging venues for her meetings, and answering her office telephone. He testified that his workstation was always located within the VPFA's office suite, which FOIA b6 & b7c occupied as a contractor employee and, later, as the VPFA. The suite is located within the wing of office spaces assigned to the President, the Provost, and other NPS senior leaders.

70. FOIA b6 & b7c testified that while FOIA b6 & b7c was a contractor employee, his official supervisor was FOIA b6 & b7c. He said that although it was not required, he always noted his anticipated leave on FOIA b6 & b7c calendar. Similarly, he stated, FOIA b6 & b7c kept him advised of her absences from the office. FOIA b6 & b7c stated that he did not receive an employee performance evaluation from FOIA b6 & b7c or anyone else for the period that FOIA b6 & b7c was a contractor employee.

71. FOIA b6 & b7c provided the following written statement concerning his interactions with FOIA b6 & b7c while FOIA b6 & b7c was a contractor employee:

⁸ We previously noted that this title was removed from the Statement of Work because of concerns FOIA b6 & b7c, the FISC counsel, had raised.

FOIA b6 & b7c was assigned to my section during the period FOIA b6 & b7c was a contractor. I was told by Human Resources (HRO) he was moved from his old position (in the Engineering School, I believe) to my section to assist FOIA b6 & b7c. He moved to the desk which sat right outside her door (the office she occupied as a contractor, then later as the VP, F&A to this day) in the general office area. His duties were to assist her. Specific duties were never discussed with me. I am unaware of any work products. My interaction with him was when I called her office he was the one who answered the phone. I did not meet with him on a routine basis. He gave me no status of his day to day activities. I did not routinely communicate with him for other than occasional phone call or seeing him when I was in the immediate work area. I did not personally manage his work schedule or daily time. ...

I had my FOIA b6 & b7c, search if a performance appraisal (PARS) was done, as he coordinates this area. I also asked HRO to check for any PARS from that period. None could be located. I discussed with FOIA b6 & b7c to try to answer why one was not done and we are offering no excuse as he must have been missed, not working in our immediate area.

72. FOIA b6 & b7c testified to the following concerning FOIA b6 & b7c role at NPS while she was a contractor employee:

She was present in all our meetings; because I used to attend all the exact same meetings. . . . Call it the Vice President/Dean layer. And she would be present. You could call [her input] recommendations, but . . . if you were sitting in that room, you wouldn't be able to tell the difference between her status versus anybody else's status in the room. [She was an] active participant in the conversation.

I did not communicate with FOIA b6 & b7c on a daily basis. My interaction with FOIA b6 & b7c during her contracting period was to meet on at least a weekly basis, discussing government financial methodologies. I also answered her questions. I am aware that as a contracted special assistant to the NPS President she was looking at NPS processes. She did not supervise me or my folks.

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73. FOIA b6 & b7c discussed her working relationship with FOIA b6 & b7c while she was a contractor employee. She testified that he performed typical administrative assistant tasks for her, including keeping her calendar, greeting office visitors and scheduling meetings. However, she stated that she did not officially supervise FOIA b6 & b7c. She said:

My assistant, FOIA b6 & b7c, who . . . acted as my assistant since I came [to NPS] three years ago, reported to the Comptroller. He did not report to me. I did not do his performance evaluation. I provided some input, but I did not do his performance evaluation. . . .⁹ I wasn't acting in a position where I had anybody reporting to me. And quite frankly, that was the difficulty that I had in being a contractor. It was too constraining.

74. President Oliver testified that he was unsure how FOIA b6 & b7c was assigned to be FOIA b6 & b7c administrative assistant while she was a contractor employee. He said, however, that it seemed logical to assign her office support. President Oliver added that he recalled being assigned an administrative assistant when he was a Government contractor, but the assistant was also a contractor employee.

75. Regarding guidance that FOIA b6 & b7c received on her day-to-day tasks, she stated that she never spoke to the NPS Contracting Officer's Representative (COR) for clarification of any task she was performing. She further testified that she did not require daily direction from President Oliver. She stated the following:

I had the statement of work that I was working on. It was made very clear with the statement of work and the contract what things that I was going to do. But I sought guidance from him, if you will, in carrying out that statement of work.

76. Regarding his method for tasking FOIA b6 & b7c, President Oliver testified that her services were in direct support of his office and he met with her soon after her arrival to identify areas for her review, but he did not "micromanage" her because she did not require it. President Oliver recalled that they had regular meetings, and he saw her daily because of the many group activities ongoing at the time. President Oliver

⁹ As noted above, FOIA b6 & b7c did not receive a performance evaluation during the period that FOIA b6 & b7c was a contractor.

stated that FOIA b6 & b7c provided him monthly reports that he believed demonstrated her performance was consistent with her Task Order.

77. President Oliver testified that he did not consult with the assigned COR in managing FOIA b6 & b7c Task Order. He said he neither sought nor received advice from Command Counsel or any staff member about the nature of duties assigned to FOIA b6 & b7c [other than FOIA b6 & b7c advice that FOIA b6 & b7c could not supervise Government employees and the later complaint about FOIA b6 & b7c convening meetings and tasking NPS staff].

78. When interacting with NPS faculty and staff, FOIA b6 & b7c believed it was clear that she was a contractor. She said, "It was on my CAC card that I was a contractor employee; it was on my business cards that I was a contractor. It was in my e-mail address that I was contractor."

79. Between July 2009 and June 2010, FOIA b6 & b7c provided monthly performance reports to her employer, DCS. She provided copies of these reports to President Oliver. The tasks discussed in the immediately-following paragraphs were among those FOIA b6 & b7c reported performing under contract at NPS.

80. KUALI Financial System (KFS). FOIA b6 & b7c reported that she established the working group of NPS employees to implement KFS. FOIA b6 & b7c also reported that she developed the work description for a contracted Project Coordinator to oversee KFS at NPS, and that she participated in interviews of the individuals nominated by the contractor to perform the task. President Oliver testified that he was not aware of FOIA b6 & b7c participation in interviewing contractor employees for assignment to NPS.

81. Other contracting Processes. FOIA b6 & b7c reported to DCS that she assisted in the review of a prospective contractor's proposal to provide an electronic budgeting tool to NPS. She said that she also amended a SOW for a third-party contractor to conduct a space inventory and participated in identifying medications required in another existing contract.¹⁰

82. NPS Budget Processes. FOIA b6 & b7c reported to DCS that she participated in developing the NPS budget. She also reported participating in discussions with the Navy Office of Budget

¹⁰ We did not review the proposals or SOW FOIA b6 & b7c claimed to have reviewed. Therefore, we make no finding as to whether she may have inadvertently viewed proprietary/restricted information.

(FMB) and OPNAV Manpower, Personnel, Training and Education Resource Management Office (N-10) on an indirect-cost model for NPS. She reported further that she participated in generating the response to the POM budget call.

83. NPS Administrative Department Reorganization. FOIA b6 & b7c reported to DCS that she reviewed the NPS Administrative Department for reorganization. She reported that she developed and implemented the reorganization transition plan, with President Oliver's approval.

84. FOIA b6 & b7c testified that the reorganization transition plan she developed included creating the new Resource, Planning and Management office [which ultimately fell within her purview after her transition to VPFA]. She stated that creation of the new office was in response to President Oliver's desire that the budget be managed in the school's financial offices. Previously, she said, the budget was managed by the [former] Chief of Staff, FOIA b6 & b7c, and the FOIA b6 & b7c FOIA b6 & b7c testified that in implementing the transition plan, she met with NPS leaders to put forward President Oliver's plan to consolidate administrative functions. Regarding FOIA b6 & b7c implementing the Administrative Department transition plan, President Oliver stated that FOIA b6 & b7c did not direct or supervise anyone while doing so.

85. NPS Staff/Faculty Meetings. FOIA b6 & b7c reported to DCS that she participated in the President's and Provost's regular meetings. She also reported that she personally convened the following meetings with government employees:

- Met with various NPS employees [who would ultimately be assigned to her as VPFA] regarding their performance metrics (at President Oliver's direction)
- Met with staff and faculty to identify their problems with administrative services
- Called together various staff and faculty members to discuss service awards
- Discussed with Human Resources staff a government employee's reasonable accommodation. In March 2010, FOIA b6 & b7c wrote, "I met several times with HR and others about [possibly] having a faculty member be provided a

reasonable accommodation by performing policy review that would eventually fall under my authority."¹¹

- Convened a meeting with NPS staff to discuss issues previously raised by [redacted] in 2008 concerning issues with reimbursable funding for research projects. [redacted] reported, "We will continue meeting until we have prepared a response to the points she raised and actions defined to address the issues."
- Met with NPS administrative service providers to develop and test a customer satisfaction survey
- Met with the NPS Comptroller concerning NPS unpaid invoices

86. [redacted] stated that when she raised her concerns about reimbursable financing for research projects with [redacted], she knew from [redacted] e-mails that she was a contractor employee, but she believed that [redacted] had the authority to implement changes because of [redacted] title and "chain of command."

87. [redacted] confirmed in her interview that she convened meetings with Government employees while she was a contractor employee. Concerning the meeting to discuss unpaid invoices, [redacted] stated that it was to discuss [redacted] actions to be taken in the case of a NPS employee who had been working in Geneva, Switzerland, and who encountered difficulty getting funds through the U.S. State Department to cover office costs. Regarding her convening the meeting about employee service awards, [redacted] stated the following:

[W]e were trying to determine whether or not it made sense to try to honor the people that worked here who had longevity, certain longevity milestones that they had reached. And so I recall that [redacted] and [redacted] and [redacted] and I met to talk about that and we were going to try to suggest that we do some kind of a ceremony on a periodic basis to honor people who had met their 10-, 15-, 20-, 25-year marks at NPS.

¹¹ Because we did not review the underlying reasonable accommodation request, we are unable to determine whether [redacted] participation in this discussion may have inadvertently impacted the individual employee's privacy interests.

88. Regarding whether NPS staff members could have perceived her initiating meetings to be an exercise of authority, FOIA b6 & b7c testified that it might be a reasonable perception given that she scheduled the meetings and set the agendas. She stated, however, that the meetings were consensual and any resulting required actions were mutually understood by the attendees rather than directed by her. FOIA b6 & b7c testified that she did not convey to anyone that the meetings were mandatory.

89. In November 2009, FOIA b6 & b7c reported to DCS that she met with a venture capitalist about investment opportunities that could benefit NPS. FOIA b6 & b7c also reported participating in introductory discussions with candidates for a senior-level, civil service position, Assistant Vice President for Research Administration.

90. FOIA b6 & b7c provided the following information to us about her meeting with the venture capitalist:

[The venture capitalist's] fund was exploring the feasibility of investment opportunities to build facilities that NPS could possibly lease to house its reimbursable research activities. We met at the Hyatt Hotel near NPS. . . . I was not accompanied by any NPS representative.

91. Regarding meeting with candidates for the position of Assistant Vice President for Research Administration, FOIA b6 & b7c stated that she attended discussions with the candidates in 2010 and provided her impressions of the candidates to President Oliver and FOIA b6 & b7c. Ultimately, she said, the position was not filled.

92. Regarding FOIA b6 & b7c meeting with a private investor on behalf of NPS, President Oliver stated, "If her participation was inappropriate, I am sure she did not know it and evidently none of the rest of us did, as I have no recollection of any concern being expressed by anyone on these matters."

93. President Oliver testified that on one occasion, in October 2009, he received a complaint that FOIA b6 & b7c was convening meetings with Government employees and assigning them tasks to complete. President Oliver stated that in response to the complaint, he told FOIA b6 & b7c to work through the Chief of Staff if she required tasking any Government employees. President Oliver believed this resolved the issue since he heard

no further complaints about FOIA b6 & b7c convening meetings or directing Government employees.¹²

94. President Oliver stated the following regarding FOIA b6 & b7c convening meetings of Government employees:

A contractor leading a team, a pickup team [or] a task force: is that considered supervising? See, in my mind not supervising means nobody worked for her, which means if they responded to her, then they did it voluntarily, which means she's not really. I mean, contractors facilitate meetings all the time and they facilitate activities all the time. So my perception was largely what we were doing here, I mean, we were managing our finances through the F6 crowd. We were managing accreditation through the educational effectiveness pickup committee. And we were doing strategic planning through the strategic planning. I mean, these are not, in my view . . . exercising Government kind of control, I don't think.

95. President Oliver stated that his understanding of the term, inherently governmental, was only that there should be no supervisory relationship between Government and contractor employees. He stated, "I mean, I've heard the word but I don't, it never occurred to me it might apply in this. . . ."

96. Concerning the possibility of an appearance that FOIA b6 & b7c exercised authority to convene meetings that required tasking Government employees, President Oliver said that he did not follow-up with the NPS staff to take ownership of FOIA b6 & b7c taskings to the staff. He stated that in hindsight, he believed that he should have made it clear to NPS employees that FOIA b6 & b7c did not exercise any authority over them.

Analysis

97. With regard to whether President Oliver allowed FOIA b6 & b7c, a contractor employee, to perform inherently governmental functions, we determined from FOIA b6 & b7c status reports, provided to both DCS and President Oliver each month, that she performed inherently governmental functions. FOIA b6 & b7c status reports establish that President Oliver either assigned or knew of her performance of inherently

¹² FOIA b6 & b7c monthly reports for February, March and July 2010 included instances where she independently convened meetings of government employees.

governmental duties while she was a contractor employee.

FOIA b6 & b7c independently convened meetings with NPS staff and faculty. Although she testified that the meetings were not mandatory, we concluded that her position title and close work with President Oliver conveyed to Government employees that they must attend. This is especially true in view of President Oliver's notification to the campus that she was part of the leadership team, working on his behalf. FOIA b6 & b7c acknowledged that the perception was reasonable. FOIA b6 & b7c independently convening these meetings, attended by Government employees, effectively served to direct their attendance and/or participation.

98. FOIA b6 & b7c participated in employment interviews of candidates for a Federal position and provided President Oliver her assessment of the candidates, also an inherently governmental function. While FOIA b6 & b7c described the proceedings as "introductory discussions," she participated alongside NPS staff members in meetings with candidates where the purpose was to identify individuals suitable for the position. These discussions were, for all intents and purposes, employment interviews. Likewise, FOIA b6 & b7c meeting with a third-party investor on behalf of NPS was improper. The meeting was intended to explore a possible business relationship between NPS and the investor, and no NPS staff member accompanied her. FOIA b6 & b7c improperly represented the Government in this case. Both this representation to outside entities and her participation in the Federal hiring process violated FAR 7.5.

99. In testimony, President Oliver admitted having only a vague familiarity with the term, inherently governmental, and he testified that he did not think the term applied in this case. President Oliver was aware of potential problems in FOIA b6 & b7c interactions with Government employees, having been advised by his FOIA b6 & b7c that she could not supervise Government employees and having received at least one complaint that she convened meetings of Government employees and assigned them tasks. Given these facts, it is disturbing that President Oliver sought no guidance in the proper use of FOIA b6 & b7c services from the responsible COR or Command Counsel.

100. FAR 37.104 defines personal services as an employer-employee relationship between the Government and a contractor employee. It states that the Government must normally obtain employees by direct, competitive hire, and that the use of personal services contracts circumvents civil service laws, unless specifically authorized by Congress.

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101. As established above, President Oliver circumvented the civil service hiring process by contracting for ^{FOIA b6 & b7c} service in lieu of direct hire. President Oliver established a new civil service position, VPFA, and took the necessary action to fill it. Upon learning that the desired candidate, ^{FOIA b6 & b7c} declined his employment offer, President Oliver directed that she be retained through contract to "review/evaluate" the organization of the Administrative Department and various financial processes at NPS. No such contract requirement existed prior to ^{FOIA b6 & b7c} declining the position. In fact, President Oliver testified that he created the contractual requirement as a compromise to hiring her as a government employee, in reaction to her declining the position, with the hope that she would later accept the VPFA position. President Oliver further testified that ^{FOIA b6 & b7c} contracted position and the VPFA position were "notionally the same."

102. According to FAR 37.104, the issue of Government supervision is key in determining whether personal services are being performed. President Oliver created an employer-employee relationship between ^{FOIA b6 & b7c} and himself while she was a contractor employee. He assigned to ^{FOIA b6 & b7c} a functional title, Special Advisor to the Office of the President. In his introductory announcement to the campus, he referred to this title and made no reference to her status as a contractor employee. His announcement indicated that ^{FOIA b6 & b7c} was joining the NPS leadership team and would "spearhead" initiatives on his behalf; and upon her arrival, he proceeded to allow her performance of the Government functions outlined above. Both ^{FOIA b6 & b7c} and President Oliver testified that she reported to President Oliver. Asked how she received work assignments, ^{FOIA b6 & b7c} testified that she believed that her Task Order adequately laid out her responsibilities, but she normally sought guidance directly from President Oliver when needed. President Oliver provided similar testimony. When he was asked to describe how he conveyed tasks to ^{FOIA b6 & b7c}, he stated that he had regular meetings with her to do so. Upon her arrival at NPS, a Government employee, ^{FOIA b6 & b7c} was detailed to duties as her administrative assistant. While ^{FOIA b6 & b7c} testified that ^{FOIA b6 & b7c} was not his official supervisor at the time, it is reasonable to believe that she gave him daily direction in performance of his government duties. This is especially germane in light of his official supervisor, ^{FOIA b6 & b7c}, testifying that he performed no supervisory oversight of ^{FOIA b6 & b7c} while he served as ^{FOIA b6 & b7c} assistant. President Oliver assigned ^{FOIA b6 & b7c} to duties that amounted to personal services and gave the appearance that she

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was a Government employee, subject to his supervision.

FOIA b6 & b7c office space in the executive office suite while she was a contractor employee, alongside NPS leaders, and her inclusion in the NPS organization chart furthered this appearance.

103. FAR 37.104 sets out conditions to be considered when assessing whether a contract amounts to personal services. Among these conditions are on-site performance, use of government-furnished equipment, comparable services performed by Government employees at similar activities, expected requirement for the services beyond one year and relatively continuous Government supervision of the contractor employee. In addition to being assigned offices in the NPS Command Suite,

FOIA b6 & b7c contract specified the use of government-furnished equipment. Since the Task Order was a contrivance to fill the VPFA function through contract, we conclude that the contracted services were those normally performed by a Government employee and the expected duration of the requirement exceeded one year.

104. According to Task Order 0086, FOIA b6 & b7c contracted services were to review and evaluate NPS processes. We determined that in her actual day-to-day performance as a contractor employee, President Oliver allowed FOIA b6 & b7c to deviate from evaluating NPS processes to directing them in certain instances and participating in them in other instances.

FOIA b6 & b7c reported to DCS and to President Oliver such regular activities as assembling working groups comprised of Government employees, resolving HR and other issues at NPS, participating in the development of the NPS budget, and helping to assemble NPS' response to a budget call. In addition to violating regulations against personal services and contracting for inherently-governmental functions, many of these activities fell outside the scope of the Task Order.

Conclusion

105. The allegation that President Oliver allowed FOIA b6 & b7c, while a contractor employee, to perform inherently governmental functions and personal services in violation FAR 7.5, Inherently Governmental Functions, and FAR 37.104, Personal Services Contracts, is substantiated.

Allegation Four: NPS Comptroller Position in Chain-of-Command

That President Oliver directed the VPFA to supervise the NPS Comptroller, placing the Comptroller in a position more than one level subordinate to President Oliver, in violation SECNAVINST 7000.27A, Comptroller Organizations.

Applicable Standard

106. SECNAVINST 7000.27A, Comptroller Organizations, defines "comptroller" as the chief financial advisor to the commander or commanding officer, with overall responsibility for budget execution, financial management, managerial accounting program analysis and performance measurement. At paragraph 4.h., SECNAVINST 7000.27A states:

Organizational Placement. The comptroller and his or her staff will be clearly identified on activity organizational charts and in billet or position descriptions. The comptroller may be assigned to either a staff code or a line department. The comptroller and staff will report directly to the head of the activity (e.g., commander, commanding general, commanding officer, superintendent, or director), since the head of the activity is ultimately responsible for proper execution of funds. Comptrollers may report via vice commanders, deputies, chiefs of staff, executive officers, or similar positions, for administrative purposes; however, the comptroller may not be subordinated by more than one level beneath the head of the activity. The comptroller must have direct, unfettered access to the head of the activity for full command authority. ...

Findings of Fact

107. We reviewed the current NPS organizational chart dated September 6, 2012, showing direct reports to the President. It shows the Executive Vice President/Provost and the Chief of Staff as the President's immediate staff. Other officials shown as direct reports to the President and Executive Vice President/Provost, are the various Deans and Vice Presidents (including the VPFA), the Librarian and the Vice Provost for Academic Affairs. The Comptroller is not shown.

108. FOIA b6 & b7c is the NPS VPFA. As reported above, NPS established that the VPFA is the Chief Financial Officer who oversees institutional budget submissions and treasury

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functions. The VPFA is also assigned responsibility for establishing budgetary policy and priorities.

109. The NPS Comptroller is FOIA b6 & b7c He testified that FOIA b6 & b7c is his immediate supervisor who signs his annual performance evaluations as first reviewer. FOIA b6 & b7c testified that although he considers that he has direct access to President Oliver, FOIA b6 & b7c position is an intervening step between the President and himself. He stated:

[President Oliver] works pretty much everything through FOIA b6 & b7c, even before it gets to me in that regard. And throughout the organization, the [title of] Vice President of Finance and Administration . . . gives the appearance that that is the head of all finance and all administration. Secondly, if you look at our organizational chart—that is, the executive level organizational chart, I am absent from that. If you look at the President's office organizational chart . . . the only place that I am mentioned in there is a dotted line that goes over to where direct report staff positions are located.¹³

110. FOIA b6 & b7c explained his involvement in the NPS budget process as follows:

When it comes to day-to-day operations, I do the official government financial functions and transactions. In other words, all execution of all funds for NPS are all handled in my department. All official government documents are signed by me.

For budget preparation purposes, she prepares the budget. . . . [S]he and the Vice Provost for Academic Affairs are writing the annual budget, and then that passes through her Resource Program Management Office. . . .

111. He further testified:

There is occasional overlap in regards to [hiring staff when] she wants to be involved. And I kind

¹³ Organizational chart of the NPS President's Office dated June 6, 2012, showing the Comptroller as member of the VPFA organization with dotted-line reporting to the President.

of placate her a little bit, saying, 'Okay, sure, you can talk to this person, but I am the actual hiring official' . . . [but] it's my responsibility. . . . Like I said, there is a bit of a tension in regards to, 'do I work for her, do I not work for her?' It is . . . a fuzzy area because of the way that LMI study put everything in and how [President Oliver] tried to implement that. It makes it difficult. It makes my job harder. . . . I don't feel oftentimes as though I have the appropriate control over the funds. . . . Ultimately when it comes to funds execution and all that, it has to be my decision. And she has not tried to overrule me on that. Now has she played an influencer on how funds are done and what we do with funds? Absolutely. She writes the budget, whether I agree or disagree.

112. FOIA b6 & b7c testified that he was aware that as Comptroller, he and not FOIA b6 & b7c was responsible for submitting the budget. He provided the following written statement regarding his understanding of SECNAVINST 7000.27A:

[As] a sitting comptroller for most of the past 21 years, both on active duty and as a civilian, the intent of the SECNAVINST is straight forward. Paragraph 4.h. describes the organizational placement and relationship of the comptroller to the head of the activity. The comptroller is a direct report in all aspects of executing the position. . . . There is also a provision in the paragraph which allows the assignment of the comptroller to one level down in the organization for administrative purposes only. . . .

113. FOIA b6 & b7c stated:

In my opinion, [we are not in compliance with SECNAVINST 7000.27A]. With the creation of the [VPFA] and the position filled 6 Jul 2010, the [VPFA] became the de facto chief financial officer to the NPS President. . . . Again, while on paper in the org charts I have a dotted line direct report to the President, it is not practiced. I am the executer of the budget written for the organization. I do have signature authority on all funding documents for the organization and I do work with the schools, and directorates to keep the execution of funds within

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regulations and law, to the best of my ability. One other area I believe is of non-compliance is the VPFA reports to the Provost and the President, with me reporting to the VPFA. Even if it was just for administrative matters, I am placed more than one level down in the organization not in compliance with paragraph 4.h.

114. FOIA b6 & b7c said that he had raised these concerns with President Oliver. He stated that when they discussed the matter, President Oliver said that he wanted FOIA b6 & b7c to serve as his supervisor. FOIA b6 & b7c testified that he raised no further concerns about this with President Oliver or anyone else. He said:

It's just that [this] is out of convenience for me, not out of whether FOIA b6 & b7c supervision] should or shouldn't be. I haven't pursued it because in the interest of keeping the peace, I have left . . . I have left that alone.

115. FOIA b6 & b7c testified that she is FOIA b6 & b7c first-line supervisor and the first reviewer on his performance appraisals. She said that he reports to her administratively with fiduciary responsibilities directly to President Oliver. FOIA b6 & b7c explained this to mean that she is responsible for personnel, staffing and employee relations issues in the Comptroller's office. She stated that while she meets regularly with FOIA b6 & b7c on financial matters, the strict obligation of funds rests with him.

Analysis

116. Pursuant to SECNAVINST 7000.27A, the Comptroller at a Navy activity must be organizationally aligned to report directly to the activity's head, who has ultimate responsibility for funds execution. SECNAVINST 7000.27A allows administrative oversight of the Comptroller organization by vice commanders, executive officers, deputies, chiefs of staff and similar senior leaders. However, this administrative oversight may create no more than one level of supervision between the head of the activity and the Comptroller.

117. President Oliver assigned FOIA b6 & b7c to supervise the Comptroller in violation of SECNAVINST 7000.27A. A comparison between the NPS announcement describing the duties of the VPFA and the SECNAVINST 7000.27A definition reveals that the two are in large part the same. Both descriptions state the position as

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Chief Financial Officer, with responsibility for the oversight of the activity's financial management. As VPFA, FOIA b6 & b7c served as more than an administrative supervisor to FOIA b6 & b7c. Although FOIA b6 & b7c testified that he had access to President Oliver and that he was the final signatory authority for budget submissions, both FOIA b6 & b7c and FOIA b6 & b7c testified that she was substantively involved in Comptroller processes. FOIA b6 & b7c testified that FOIA b6 & b7c was the "de facto Chief Financial Officer." We concur. We find that in supervising FOIA b6 & b7c FOIA b6 & b7c impeded the independent performance of his Comptroller duties.

118. Even if FOIA b6 & b7c were properly supervising the administrative aspects of FOIA b6 & b7c position, her organizational placement would be improper where the Comptroller is concerned. FOIA b6 & b7c position is placed subordinate to the Executive Vice President/Provost, two levels below the President. Her position as the Comptroller's supervisor created more than one supervisory level between the Comptroller and the head of the activity, in violation of SECNAVINST 7000.27A.

119. We note that FOIA b6 & b7c was well aware of his duties and responsibilities as NPS Comptroller, but he made little effort to seek correction of his organizational placement. FOIA b6 & b7c testified that he raised this issue with President Oliver and that President Oliver was disinclined to change it. Rather than continue to seek correction, FOIA b6 & b7c testified that he "left it alone" to "keep the peace" and for his own convenience. We believe that FOIA b6 & b7c might have been effective in helping to resolve his improper organizational alignment had he consulted with NPS Counsel, HRO or other Navy subject-matter experts.

Conclusion

120. The allegation that President Oliver directed the VPFA to supervise the NPS Comptroller, placing the Comptroller in a position more than one level subordinate to President Oliver, in violation SECNAVINST 7000.27A, Comptroller Organizations, is substantiated.

Observation About VPFA Position Decisions

121. In our opinion, President Oliver's decisions pertaining to the VPFA position, discussed in allegations one through four, constitute gross mismanagement and waste.

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Allegation Five: Violation of Gift Rules

That President Oliver solicited and accepted gifts from the Foundation on behalf of the U.S. Navy, in violation of 10 United States Code (USC) 2601, General Gift Funds; SECNAVINST 4001.2J, Acceptance of Gifts; OPNAVINST 4001.1F, Acceptance of Gifts; NAVPGSCOLINST 4001.1E, Policies and Procedures for Gift Administration, Gift Acceptance and Event Sponsorship for the Naval Postgraduate School; and NAVPGSCOLINST 4001.2B, Policy on President's Gift Fund.

Applicable Standards

122. 10 USC 2601, General Gift Funds, grants SECNAV and other DoD Secretaries, including the Secretary of Defense, authority to "accept, hold, administer, and spend any gift. . . ." This statute is one of several that authorize the acceptance of gifts to DON. For example, 10 USC 6973 authorizes the acceptance of gifts for the United States Naval Academy and Naval Academy Museum. There is no statute that expressly authorizes gifts for the benefit of NPS.

123. Of particular relevance to this inquiry are 10 USC 2601 requirements to deposit monetary gifts in the U.S. Treasury, to avoid accepting gifts that would reflect unfavorably on Department, and to avoid accepting gifts that would compromise the integrity or appearance of integrity of any DON program.

124. While none of the various DON gift statutes mention solicitation, a 19 January 2001 opinion of the Department of Justice Office of Legal Counsel states that similarly worded statutes authorizing the acceptance of gifts for itself (28 USC 524(d)(1)), the Office of Government Ethics (5 USC App 403(b)), the Department of State (22 USC 2697(a)), the Department of Commerce (15 USC 1522), and the Department of Treasury (31 USC 321(d)(1)) include the implicit authority to solicit gifts.

125. Volume 12, Chapter 30, Operation and Use of General Gift Funds, of the DoD Financial Management Regulation sets forth overall policy for acceptance of gifts under 10 USC 2601. Paragraph 300502 states:

Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift. Acceptance Authorities shall not accept gifts offered contrary to this policy.

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126. SECNAVINST 4001.2J sets forth SECNAV's policy and procedures for acceptance of gifts, including money and personal and real property. The instruction defines money as cash, checks, or other forms of negotiable instruments. Personal property includes all property other than real property (land and buildings on that land).

127. The SECNAV instruction authorizes CNO, VCNO, and Director of Navy Staff and other very senior officials to accept gifts subject to certain limitations. It permits the CNO to delegate certain gift acceptance authority to subordinates in his/her chain-of-command and establishes rules that apply to any Navy official in the gift acceptance process.¹⁴

128. Paragraph 6b of the SECNAV instruction prohibits solicitation by DON personnel unless it is "authorized by SECNAV." Paragraph 6g recognizes the value of foundations and other non-profit organizations in providing support to the Department, but cautions they "should not be used as conduits to make indirect gifts that DON gift acceptance policy would not permit if offered directly to the Department of the Navy."

129. Paragraph 6d addresses offers of future gifts, to include offers to give a gift in installments over time. It states:

d. Offer of Future Gifts. Applicable gift acceptance statutes do not provide authority to accept a gift before the gift is actually available for transfer to the Department of the Navy. However, the Department of the Navy may accept offers of future gifts (e.g., pledges to raise money, or offers to purchase real or personal property for delivery to the Department of the Navy) under the following two-step procedure:

(1) Acknowledgement. When a donor makes a pledge or offer of a future gift, whether a one-time gift or a gift made in several installments, the total cumulative amount of the future gift determines the appropriate acceptance authority. The acceptance authority shall determine whether the Department of the Navy is likely to accept the gift under the criteria of this instruction when the actual donation occurs. If the Department of the Navy is likely to accept the gift, the acceptance authority will acknowledge the gift and advise the donor that gift acceptance will likely occur after actual presentation of

¹⁴ The instruction does not provide any special authority to the NPS President or NPS.

the gift, portion, or installment to the Department of the Navy.

(2) Acceptance. When the donor presents the gift, portion or installment to the Department of the Navy, the value of the gift presented on that occasion determines the proper acceptance authority for that gift, portion or installment. The acceptance authority will determine whether to accept the gift, or that portion or installment thereof, applying the acceptance criteria and utilizing the procedures set forth in this instruction. Activities may request a one-time delegation of authority to accept a gift, portion or installment of gifts in amounts greater than their acceptance authority for gifts previously acknowledged in step one.

130. Paragraph 7 provides instructions for processing gifts. For example, it requires donors to make checks payable to the DON and reiterates the statutory requirement that all gifts of money be deposited into the Treasury. The instruction mandates that prospective donors be "advised to submit gift offers in writing explicitly specifying any conditions associated with gift acceptance." The instruction also provides that, with limited exceptions for wounded or injured in the line or duty, services may not be accepted as gifts.¹⁵

131. OPNAVINST 4001.1F promulgates CNO's policies in connection with accepting and processing of gifts flowing from 10 USC 2601 and SECNAVINST 4001.2J. It does not address solicitation. This instruction grants the President, NPS, express authority to accept gifts to the Navy of \$12,000 or less. The instruction specifies various reporting requirements.

132. Two local instructions, NAVPGSCOLINST 4001.1E and NAVPGSCOLINST 4001.2B, set out further responsibilities and requirements regarding gifts to NPS.

133. Paragraph 5 of NAVPGSCOLINST 4001.1E prohibits solicitation, stating:

NPS employees will not directly or indirectly solicit gifts for themselves, the Naval Postgraduate School, or for the Navy under any circumstances. Gifts offered as a result of solicitation will not be accepted. NPS employees must not refer a potential donor to any non-Federal entity.

¹⁵ For purposes of this report, gift of services exemptions do not apply.

134. Paragraph 6, Gifts from Foundations, contains language about gifts from foundations that is similar to the language in paragraph 6g of the SECNAV instruction.

135. Paragraph 7, Reimbursements, states:

NPS employees may not accept reimbursement from a non-Federal entity for expenses that support the school or its mission.¹⁶ Should a non-Federal entity offer to support a school related function or event, then that offer must be processed in accordance with this instruction.

136. NAVPGSCOLINST 4001.2B defines the President's Gift Fund as:

Composed of donations of funds that are available for expenditures for any purpose within the mission of the NPS and at the discretion of the President.

Findings of Fact

137. From 2007 to the present, the Foundation made gifts of cash and property with an aggregate value in excess of \$900,000 to the Navy for the benefit of NPS in a manner consistent with gift laws and applicable Navy instructions. During the same period, President Oliver, Dr. Ferrari, and various NPS staff and faculty members accepted gifts directly from the Foundation in a manner inconsistent with applicable gift statutes and Navy instructions.¹⁷ From 2009 to 2011, President Oliver also authorized NPS employees to receive direct payments of money from the Foundation, usually to reimburse the employees for expenses they incurred in support of NPS functions, instead of directing they be reimbursed from a NPS account in which formal gifts from the Foundation to the Navy had been deposited. In each instance we reviewed, the amount paid to the employee by the Foundation was within President Oliver's authority to accept for the benefit of NPS. The evidence we developed indicates that this approach was used because it avoided the need to formally process the money as a gift to the Navy.

¹⁶ The Foundation is a non-Federal entity.

¹⁷ Other NPS employees' solicitation and acceptance of gifts and use of official position for personal gain is addressed in a subsequent report.

Gifts Authorized by Statute and Instructions

138. We reviewed yearly gifts of money and property from the Foundation to NPS that were properly accepted by the Navy. For each gift, ^{FOIA b6 & b7c} , the Foundation ^{FOIA b6 & b7c} _{FOIA b6 & b7c} , offered the gifts to NPS in a letter to President Oliver that outlined the Foundation's intent for the gift. In accordance with SECNAVINST 4001.2J, OPNAVIST 4001.1F, and NAVPGSCOLINST 4001.1E, the CNO or other senior U.S. Navy officer or President Oliver accepted the gifts on behalf of the Navy for the benefit of NPS.

139. From 2007 to 2011, the Foundation made, by check, 30 separate monetary gifts to NPS. For each of these gifts, the NPS Staff Judge Advocate (SJA) retained a record of the gift. The SJA records establish that for each of the 30 gifts, the SJA prepared a recommendation to President Oliver that the gift be accepted on behalf of the Navy. In instances where the gift was within President Oliver's gift acceptance authority, the SJA recommended that he accept the gift.¹⁸ In instances where the value of the gift exceeded President Oliver's acceptance authority, the SJA recommended that the gift offer be forwarded to CNO with a recommendation to accept the gift. Twenty-three of the gifts were accepted by President Oliver, the remaining seven were accepted by a senior Navy official.¹⁹

140. For each of the properly accepted monetary gifts, the Foundation's check was forwarded to the Assistant for Administration, Under Secretary of the Navy (AA/USN). AA/USN, in turn, deposited the funds and distributed them back to NPS. The funds were placed in the President's Gift Fund account.

141. The NPS Comptroller maintains the President's Gift Fund account. The local NPS Instruction provides that funds in the President's Gift Fund, are "available for expenditures for any purpose within the mission of the NPS and at the discretion of the President."²⁰ Within the President's Gift Fund, accounts were set up for various positions and purposes. One account was for President Oliver's use.

¹⁸ Currently, the NPS President is authorized to accept gifts of a value of \$12,000 or less. Prior to 2010, the NPS President's authority to accepted gifts was \$10,000 or less.

¹⁹ The IG did not determine whether acceptance of each of the 30 monetary gifts was appropriate.

²⁰ It should be noted that this authority incorrectly implies that the funds may be used for anything the President deems appropriate. The use is limited by general fiscal law principles regarding the use of gift funds.

142. From 2007 through 2011, the Navy accepted 43 gifts of personal property other than cash or checks for NPS. These gifts included computer network hardware valued at \$250,000 that a private corporation donated to NPS through the Foundation, a gift of travel valued at \$25,300 that a foreign university donated, and a blue tie valued at \$20 for President Oliver that was donated by the Federally funded university. There were also gifts of personal property other than cash or checks from other corporations, the Foundation, and private individuals.²¹

143. President Oliver accepted 35 of the 43 gifts of personal property on behalf of the U.S. Navy. Similar to cash gifts, President Oliver was authorized to accept the personal property gifts with a value up to \$12,000. CNO or other senior Navy officials accepted the remaining eight gifts because their value exceeded President Oliver's acceptance authority.

144. In 2009 and 2010, the monetary gifts for President Oliver's use were less than the gifts in 2007 and 2008. As addressed below, beginning in 2009 the Foundation made payments to support President Oliver's office out of an account it kept at the Foundation and did not gift to the Navy.

145. The dates and amounts of the Foundation's monetary gifts to the President's Gift Fund for the President's office for 2007 to 2011 are set forth in Appendix B of this report.

November 2007 Foundation Gift of \$50,000

146. In addition to monetary gifts for specific NPS faculty and staff positions, the Foundation made monetary gifts for specified purposes. One such gift, offered in November 2007, was in the amount of \$50,000. In his gift offer letter, FOIA b6 & b7c stated that the "donation is to establish an account" in the NPS Comptroller's Office to be used "for expenses related to faculty recruitment and retention." We will refer to the account that NPS created for this purpose as the "NPS Faculty Recruitment and Retention account" to distinguish it from an account for a similar purpose that the Foundation created in 2009, which we will refer to as the "Foundation R&R Account."

147. Since the \$50,000 gift exceeded President Oliver's gift acceptance authority, President Oliver forwarded the gift offer to the Director, Navy Staff and recommended that he accept the gift. In December 2007, the Director, Navy Staff accepted the

²¹ The IG did not determine whether acceptance of each of the 43 gifts of personal property other than cash or checks was appropriate.

gift on behalf of the U.S. Navy. The Foundation's check was forwarded to AA/USN and \$50,000 was distributed back to NPS and placed into the NPS Faculty Recruitment and Retention account in the President's Gift Fund. It was the largest single monetary gift by the Foundation to NPS for a single account.

148. On March 5, 2008, FOIA b6 & b7c FOIA b6 & b7c
FOIA b6 & b7c, sent an e-mail to the NPS Deans, Department Chairs, and Faculty Council members making a "call for 'Requests for Funding' from NPS's Faculty Recruitment and Retention Fund." The e-mail set out the background of the NPS Faculty Recruitment and Retention account and examples of appropriate uses of the account funds, provided an overview of the request review process and the request review committee, and outlined the process for making a request for funding. This request was consistent with provisions of the NPS gift instruction that established a prioritized list of NPS needs for which monetary gift donations may be used.

149. FOIA b6 & b7c provided records that reflect in Fiscal Year (FY) 2008 NPS faculty and staff requested over \$113,000, the request review committee approved more than \$53,000, and faculty and staff expended more than \$35,000 of the approved amounts. In FY 2009, NPS faculty and staff made additional requests, the review committee approved more than \$12,000, and approximately \$9,000 was spent. There were no expenditures from the account in 2010 and 2011. In all, \$44,000 was distributed from the NPS Faculty Recruitment and Retention account. In April 2012, FOIA b6 & b7c distributed the remaining \$6,000, with \$1,500 going to each of the four academic deans at NPS.

Gifts Not In Accordance with Statue and Instructions

150. Our investigation revealed that in 2009, the Foundation created and maintained the Foundation R&R Account to support NPS, but never offered any of the funds to the Navy in accordance with gift procedures outlined in applicable instructions. Instead, the Foundation made direct payments from this account to NPS personnel or vendors after President Oliver would approve the use of those funds for a specific purpose. The investigation also revealed additional accounts held at the Foundation for the use of President Oliver and Dr. Ferrari. This report discusses how President Oliver received funds from these accounts in a manner inconsistent with the laws and Navy Instructions governing the acceptance of gifts to the Navy. We also discovered that the Foundation purchased personal property and gave it to President Oliver.

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Foundation R&R Account²²

151. In December 2008, FOIA b6 & b7c, then FOIA b6 & b7c, sent an e-mail to FOIA b6 & b7c in which he requested funds from the Foundation to pay for expenses related to an upcoming visit to NPS by FOIA b6 & b7c, a Nobel Laureate. This request was the triggering event for the Foundation establishing on February 1, 2009, a \$50,000 account internal to the Foundation. This internal account was used for NPS faculty recruitment and retention. We refer to this account as the Foundation R&R account.

152. Most significantly, FOIA b6 & b7c, the Foundation FOIA b6 & b7c would release funds from the Foundation R&R account only when President Oliver approved the use of funds in the account for the requested purpose. Upon his approval, the Foundation would make payments from the Foundation R&R account directly to faculty and staff at NPS, or make payments to vendors on their behalf. None of the funds in the Foundation R&R account were ever offered as a gift to the Navy and none were ever accepted by the Navy as required by SECNAVINST 4001.2J. Unlike the NPS Faculty Recruitment and Retention account, no review committee evaluated the purpose for which the money or vendor payment was requested or recommended that the President approve or disapprove specific faculty requests for the use of the funds in the Foundation R&R account.

153. The investigation revealed that President Oliver approved expenditures of nearly \$48,000 from the Foundation R&R account²³ in order for the Foundation to reimburse NPS personnel or make payments to third-party vendors on behalf of NPS personnel. None of the expenditures followed a formal written gift offer by the Foundation and a formal gift acceptance by the Navy. Moreover, faculty and staff in many instances sent written requests for reimbursement of expenses they incurred for various recruiting activities directly to the Foundation in order that the Foundation would cut them checks for those expenses. The requests for reimbursement, all approved by President Oliver, violated Navy gift processes, including the express prohibition against accepting reimbursement from a non-Federal entity contained in the NPS gift instruction. The requests for reimbursement or for payments to third-party vendors also may

²² As previously discussed, we refer to this account as the Foundation R&R account in order to avoid confusion with the NPS Faculty Recruitment and Retention account.

²³ In amounts of over \$29,700 in 2009, \$15,000 in 2010, and \$3,000 in 2011.

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have violated the general standards of conduct set forth in 5 CFR 2635.202, General Standards, concerning acceptance of gifts by Government employees or constituted an illegal supplementation of salary under 18 USC 209.²⁴

154. An e-mail string, "Subject: FOIA b6 & b7c Nobel Laureate visit January/February," dated between December 1 and December 9, 2008, discussed the upcoming visit to NPS by FOIA b6 & b7c. The e-mail string started with an e-mail, dated December 1, from FOIA b6 & b7c, to FOIA b6 & b7c (FOIA b6 & b7c was cc'ed). In the e-mail, FOIA b6 & b7c requested a meeting with FOIA b6 & b7c and wrote, "I need about \$10K to buy air ticket for Nobel Laureate FOIA b6 & b7c and his wife and son to visit NPS." FOIA b6 & b7c added, "Due to his age and stature we need to buy him first class tickets and this is why I need foundation funds."

155. On December 2, 2008, FOIA b6 & b7c responded to FOIA b6 & b7c (FOIA b6 & b7c was cc'ed) and acknowledged that the Foundation had previously spent "about \$10,000 to fly" a guest lecturer to NPS. FOIA b6 & b7c also wrote:

Since then we have given \$50,000 to NPS for faculty retention and recruitment [NPS Faculty Recruitment and Retention account] and plan to give another \$50,000 in 2009. To get a Nobel Laureate here at NPS to me sounds like an incentive to keep faculty here and to recruit others. President Oliver is the one who makes the final decision on how the \$50,000 gets spent. I would recommend asking him to approve taking the \$10,000 out of the \$50,000.

156. On December 2, 2008, FOIA b6 & b7c responded to FOIA b6 & b7c and wrote, "I spoke with FOIA b6 & b7c who agrees to spend \$10K." FOIA b6 & b7c also wrote that he spoke with the NPS Comptroller, FOIA b6 & b7c. Regarding his conversation with FOIA b6 & b7c FOIA b6 & b7c wrote:

FOIA b6 & b7c explained to me that once the Foundation money is transferred to NPS account then we have to work with government regulations to give the honorarium and that means the whole request needs to be signed by SECNAV to go above \$2K and he says \$10k is some thing we can request that way but if the honorarium (or

²⁴ No findings regarding other employees are made in this report. We will address other employees in later reports. To date, the cognizant US attorney has declined to prosecute any NPS personnel for 209 violations.

buying the flight tickets) can be done at the Foundation side then it is easier.

157. During our interview with FOIA b6 & b7c in June 2012, he testified, "I do not remember the conversation well enough to say that I said this or not." He added that the e-mail correctly stated that the Secretary of the Navy would have to have approved an honorarium greater than \$2,000. He also testified that he "probably" told FOIA b6 & b7c "we cannot buy family members' flight tickets, period."

158. FOIA b6 & b7c testified that he recalled FOIA b6 & b7c visit to NPS and that at the time he assumed that the Foundation had paid for the travel of FOIA b6 & b7c and his family. He stated that he knew that the Navy did not pay FOIA b6 & b7c an honorarium "because I don't recall ever paying that, nor do I have records showing we paid it."²⁵

159. FOIA b6 & b7c added in the e-mail that FOIA b6 & b7c told him that NPS had \$29,000 remaining in the NPS Faculty Recruitment and Retention account. FOIA b6 & b7c added, "Since the visit is January/February time frame I am wondering whether NPS foundation can handle this \$10k directly without transferring to NPS account. What do you suggest?"

160. On December 4, 2008, FOIA b6 & b7c forwarded the FOIA b6 & b7c Nobel Laureate e-mail to President Oliver.²⁶ FOIA b6 & b7c wrote:

We gave NPS \$50,000 in December 2007 for faculty retention and recruitment and have another \$50,000 in the budget for 2009. If you approve this \$10,000 for Nobel Laureate FOIA b6 & b7c I will fund it and then have \$40,000 available for 2009.

161. President Oliver never responded to FOIA b6 & b7c e-mail. However, on December 8, 2008, FOIA b6 & b7c forwarded the e-mail chain to FOIA b6 & b7c to the President, and asked her to check with President Oliver about whether "he wants to go along with this."

²⁵ FOIA b6 & b7c testimony is inconsistent with what he said in May 2009 when he was interviewed as part of the IG's investigation of FOIA b6 & b7c. In his testimony at that time, FOIA b6 & b7c stated that the Navy paid FOIA b6 & b7c a \$10,000 honorarium. He stated that "we had to prepare a package" and get "approval from SECNAV." We questioned FOIA b6 & b7c about his prior inconsistent statement and he acknowledged that he knew in 2009 that the Foundation paid FOIA b6 & b7c honorarium. We address the FOIA b6 & b7c investigation later in this report.

²⁶ The e-mail included the entire e-mail chain.

162. On December 8, 2008, FOIA b6 & b7c responded to FOIA b6 & b7c . She wrote, "Admiral Oliver said that he goes along with your email."

163. Foundation records reflect that on February 1, 2009, the Foundation established the Foundation R&R account with a balance of \$50,000.²⁷ The Foundation records also show that on February 13, 2009, the Foundation paid a \$10,000 "honorarium" to FOIA b6 & b7c . The Foundation paid an additional \$851.42 to a local grocery store and Morale Welfare and Recreation (MWR) from the Foundation R&R account for expenses related to FOIA b6 & b7c visit to NPS.

164. With regard to setting up the Foundation R&R account, FOIA b6 & b7c stated, "I don't know whether it was our initiative or the school's initiative to say why don't you keep the money."

165. One reason FOIA b6 & b7c gave for the Foundation keeping the funds was that the Foundation could give an honorarium "higher than the \$2,000 that they [NPS] could legitimately do."²⁸ FOIA b6 & b7c also testified that in addition to paying honoraria, the Foundation also funded the travel expenses for spouses of applicants invited to NPS for interviews for positions such as a dean or a professor. He testified that NPS pays for the applicant's travel but not for the spouse. He added that President Oliver had told him that "the spouse is just as important to the individual being hired. So we funded some of those [from the Foundation R&R account]."

166. In addition to payments for honoraria and candidates' spouse's travel, Foundation records show it used Foundation R&R account funds to pay for: (1) Receptions; (2) Faculty candidate meals; (3) Workshops; (4) Refreshments; (5) Wine; (6) Working meals; (7) Hosting foreign delegations; (8) Course speakers' dinners; and (9) Dinners with research sponsors.

167. It is noted that the Foundation R&R account funds were primarily used for food, beverages (including alcohol), and entertainment expenses. Although such expenses can be authorized, they generally require adherence to strict criteria and review.

²⁷ NPS Foundation records established that the NPS Foundation never donated the \$50,000 referenced in FOIA b6 & b7c December 4, 2008, e-mail or any additional money for the NPS Faculty Recruitment and Retention account.

²⁸ CNO must approve honorarium greater than \$2,000. It is noteworthy that the Foundation Recruitment and Retention account was first established so that NPS could avoid higher-level review of an honorarium.

168. Importantly, FOIA b6 & b7c testified that though the Foundation held the Foundation R&R account, only President Oliver could authorize an expenditure. He told us, "to use it, the president had to say, 'I authorize this for faculty retention and recruitment money'." He further testified,

If somebody came -- had said hey, is there any faculty retention and recruitment money left, I said, there's some in there, and I'll find out the exact amount or something, but you need to go to the president to authorize it.

169. We reviewed e-mails and documents that corroborated FOIA b6 & b7c testimony and confirmed that payments to NPS faculty or staff or vendors on behalf of faculty or staff from the Foundation R&R account were only made after President Oliver authorized an expenditure. Examples included:

- An e-mail, "Subject: Request for some funds from NPS Foundation's Recruitment and Retention Fund," dated March 12, 2009, to President Oliver with a cc to FOIA b6 & b7c in which FOIA b6 & b7c requested "a modest amount of \$1200 from NPS Foundation Recruitment & Retention Fund . . . in order for us to host" dinners with an Abel Prize laureate and NPS Faculty members.²⁹ President Oliver responded to FOIA b6 & b7c with a cc to FOIA b6 & b7c on March 13, 2009, and wrote: "OK by me."
- A memorandum, "Subj: NPS Foundation Support for Faculty Spouse Travel," dated June 26, 2009, from FOIA b6 & b7c FOIA b6 & b7c, to President Oliver, in which FOIA b6 & b7c wrote, "On the advice of FOIA b6 & b7c of the NPS Foundation, I request that you authorize the Foundation to financially support the travel of [a newly recruited faculty member's wife for a house hunting trip] at the end of July." On July 8, 2009, President Oliver approved the request by checking and initialing the "Approve" block on the memorandum. Also on July 8, FOIA b6 & b7c sent an e-mail, "Subject: NPS Foundation Support for Faculty Spouse Travel," to FOIA b6 & b7c and FOIA b6 & b7c in which she wrote, "Admiral Oliver approved your memo for financial support for the travel" of the spouse.

²⁹ The Norwegian Academy of Science and Letters established the Abel Prize for outstanding scientific work in the field of mathematics in 2002. The prize amount is 6 million Norwegian Krone (more than \$975,000).

170. The evidence shows that personnel from the Graduate School of International Studies (SIGS) made the greatest number of requests for money from the Foundation R&R account. Of all 62 payments from the Foundation R&R account, 29 were for payments to or for SIGS personnel for a total of greater than \$11,000.³⁰

FOIA b6 & b7c is the FOIA b6 & b7c of SIGS.

171. The Foundation made payments by check directly to SIGS personnel or paid invoices on behalf of SIGS personnel. We found that FOIA b6 & b7c or FOIA b6 & b7c, FOIA b6 & b7c FOIA b6 & b7c to the SIGS FOIA b6 & b7c, made repeated requests that funds from the Foundation R&R account be set aside or earmarked for SIGS personnel. Thereafter, as SIGS personnel incurred expenses they provided receipts for expenses and the Foundation gave them checks for the value of the expenses. When SIGS personnel depleted the set aside funds, FOIA b6 & b7c or FOIA b6 & b7c made additional requests for funds for SIGS from the Foundation R&R account. The e-mail exchanges below document the repeated SIGS requests made to FOIA b6 & b7c or President Oliver and President Oliver's approvals of the requests.

172. On May 15, 2009, FOIA b6 & b7c sent an e-mail to FOIA b6 & b7c in which he wrote,

FOIA b6 & b7c has expended his \$5000 allocation of discretionary R&R [recruitment and retention] funds and the NPS pot is dry too. Is there any chance the Foundation will replenish these funds before the end of the fiscal year?"

173. Later that day, FOIA b6 & b7c responded to FOIA b6 & b7c (FOIA b6 & b7c was cc'ed), and wrote,

We kept \$50,000 of the \$100,000 that we pledged. The President approves any request to use money from the R&R fund. So far in 2009 he has authorized \$10,000 for the Nobel Laureate person that was here in February plus another \$10,000 for something else - so there is about \$30,000 left.

174. Also on May 15, 2009, FOIA b6 & b7c responded to FOIA b6 & b7c e-mail. In addition to FOIA b6 & b7c, FOIA b6 & b7c was cc'ed on this e-mail. FOIA b6 & b7c wrote:

³⁰ There were six payments related to the FOIA b6 & b7c visit for more than \$10,750 and 3 payments for greater than \$11,000 for a single event in September 2009.

So, we need to make a formal request to the President to free up all or some of the \$30k for the Deans?

If yes, then, FOIA b6 & b7c do you want to do that?

175. FOIA b6 & b7c responded to FOIA b6 & b7c, and cc'ed FOIA b6 & b7c and FOIA b6 & b7c. He wrote: "So far the President has approved individual requests. Do not know if he wants to divide it up between the Deans. His call but we write the checks (avoids some navy rules)."

176. On May 26, 2009, FOIA b6 & b7c forwarded the entire e-mail chain to FOIA b6 & b7c. FOIA b6 & b7c was cc'ed on the e-mail. FOIA b6 & b7c wrote:

Did you get a chance to talk to President Oliver about his intentions for the remaining (about \$25k) Faculty Recruitment and Retention Funds provided by the Foundation? Specifically, is the President going to personally control the funds; do we need to make requests for specific events; any intention to give the Deans an additional allocation? FOIA b6 & b7c is requesting \$2500 for the remainder of the year.

177. FOIA b6 & b7c, in turn, forwarded the e-mail chain to President Oliver. On May 26, 2009, President Oliver responded to FOIA b6 & b7c, and cc'ed FOIA b6 & b7c, Dr. Ferrari, FOIA b6 & b7c and FOIA b6 & b7c. President Oliver wrote:

I'm OK with giving FOIA b6 & b7c \$2,500, but I'd like some level of detail on the intended use beyond just "faculty recruiting and retention" before I authorize it.

178. FOIA b6 & b7c responded to President Oliver. He wrote:

Justification for additional R&R funds:

SIGS has several hiring actions to fill faculty positions and it is customary for the members of the search committee to take candidates to dinner during their interview visits to NPS. However, the most significant need is to conduct another all hands picnic similar to the one you attended a few weeks ago. As you know, SIGS is a large and varied organization, so when we are able to meet all together, in a relaxed social setting, it enhances

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camaraderie and morale, and contributes to building synergy towards our common goals.³¹

179. On January 28, 2010, FOIA b6 & b7c sent an e-mail to President Oliver requesting \$2,000 from the Foundation R&R account. He wrote:

Thank you for the plus up of Faculty Recruitment and Retention Funds you provided last year. With the money I was able to host a DTRA [Defense Threat Reduction Agency] research workshop for NSA [Department of National Security Affairs] faculty and support faculty dinners with candidates for positions in the NSA department. Those funds are now depleted and NSA is still conducting searches for five new positions. Would you be able to provide SIGS with \$2000 this year?

180. President Oliver forwarded FOIA b6 & b7c e-mail to FOIA b6 & b7c and wrote: "I've lost track of where we are on these funds. Can you remind me?"

181. On January 29, 2010, FOIA b6 & b7c sent an e-mail to President Oliver, "Subject: Faculty Retention and Recruitment Fund Balance," in which he wrote, "13,350 remains in the Fund." President Oliver responded to FOIA b6 & b7c and wrote: "Thanks. I'd like \$2,000 to go to FOIA b6 & b7c "

182. On January 29, 2010, after he informed FOIA b6 & b7c to make \$2,000 available to FOIA b6 & b7c President Oliver responded to FOIA b6 & b7c January 28 e-mail. President Oliver wrote: "I've told FOIA b6 & b7c to make \$2,000 available for you."

183. On November 8, 2010, FOIA b6 & b7c requested President Oliver to make additional funds available to him from the Foundation R&R account. In his e-mail, FOIA b6 & b7c discussed previous expenditures from the account and provided a justification for his current request. He wrote:

I would like to request an additional apportionment of Faculty Recruitment and Retention Funds. So far this year SIGS has used R&R to fund faculty dinners with candidates for positions in the NSA department and DRMI [Defense Resources Management Institute], a faculty workshop with DTRA sponsors and in May an

³¹ Use of appropriated funds or funds gifted to the Navy to hold a staff picnic is generally not authorized under fiscal laws.

appreciation picnic for SIGS personnel. In my on-going efforts to create camaraderie among the disparate departments in the School of International Graduate Studies and demonstrate my appreciation for all the successes we have enjoyed this year, I am planning to host a holiday dinner for faculty on 9 December. The venue has yet to be determined, but initial planning indicates that about \$2500 would be needed to cover costs for this event. FOIA b6 & b7c has told me that there are sufficient funds in your Recruitment and Retention Account to support this request. Thank you for your consideration.³²

184. We were unable to confirm whether President Oliver responded to FOIA b6 & b7c request for additional funds.

185. On November 10, 2010, FOIA b6 & b7c sent an e-mail, "Subject: Faculty Recruitment and retention funding" to FOIA b6 & b7c in which FOIA b6 & b7c listed 29 payments from the Foundation R&R account. For each payment FOIA b6 & b7c listed the reason for the payment and the amount of the payment. The total of the payments was \$44,365. FOIA b6 & b7c testified, "I'll say a hundred percent [sure]," that she printed the e-mail and provided it to President Oliver. She added, "I may have said, 'Sir, have you seen this,' left it in his box and moved on."

186. On December 15, 2010, FOIA b6 & b7c sent an e-mail to President Oliver, "Subject: REQUEST FOR RECRUITMENT AND RETENTION FUNDS," and cc'ed FOIA b6 & b7c FOIA b6 & b7c and the Chairman of the Department of National Security Affairs. In the e-mail FOIA b6 & b7c wrote:

The Department of National Security Affairs is in the process of filling two faculty positions (International Security and History of War) with interviews for seven applicants to occur in the next few weeks. A traditional element of the interview process is a dinner with NSA faculty members. Request \$1120 in Recruitment and Retention Funds to support these faculty dinners (4 faculty x \$40 x 7 dinners).³³

³² We included this e-mail for the purpose of showing President Oliver's control over the Foundation Recruitment and Retention account. We did not investigate the holiday dinner that FOIA b6 & b7c discussed in his e-mail.

³³ FOIA b6 & b7c testified that faculty members who attended prospective employee dinners were authorized reimbursement for up to \$40 for each meal. He said that money from the NPS Foundation was not used to pay for the prospective employees' dinners because they were receiving per diem payments.

187. On December 15, 2010, President Oliver forwarded FOIA b6 & b7c e-mail to FOIA b6 & b7c and wrote: "What's the status of these funds?" FOIA b6 & b7c responded that "\$5,319.88 remains in the account."
188. On December 30, 2010, President Oliver responded to FOIA b6 & b7c e-mail and wrote: "\$1,120 approved. Happy New Year."
189. On June 13, 2012, we interviewed President Oliver. President Oliver was asked questions regarding FOIA b6 & b7c visit to NPS in February 2009 and about the NPS Faculty Recruitment and Retention and the Foundation R&R accounts generally.
190. Prior to interviewing President Oliver on June 13, we provided him copies of the e-mails, discussed above. These e-mails included the e-mail chain regarding FOIA b6 & b7c visit to NPS and the e-mails in which FOIA b6 & b7c and FOIA b6 & b7c made repeated requests for funds from the Foundation R&R account that President Oliver approved. We also gave President Oliver copies of the e-mails between himself and FOIA b6 & b7c discussing the amount of funds available in the Foundation R&R account.
191. We asked President Oliver, "And do you know about the recruitment and retention account that was held at the foundation?" and he responded "Yes. I -- yes, I did."³⁴
192. Shortly after acknowledging that he knew that the Foundation held the account, President Oliver testified that he approved the \$10,000 payment for FOIA b6 & b7c when FOIA b6 & b7c came to NPS in February 2009. He stated:
- And [FOIA b6 & b7c] came to campus, and I approved the expenditure of \$10,000 out of the recruitment and retention fund.
193. In a follow-up question, President Oliver was asked about where the funds he approved were held: Question: "And that recruiting and retention fund was actually held at the Foundation. Is that correct?"
194. In his response, President Oliver testified:
- Well, see, that is where I didn't know because I -- what I know now is that there was a fund that was held by the comptroller that was managed by FOIA b6 & b7c [NPS

³⁴ President Oliver provided this response approximately 1 minute and 10 seconds into the interview.

Faculty Recruitment and Retention account], and what evidently happened was that they were also holding the fund at the Foundation. So I mean this -- in retrospect, I mean I hate to say this, but you know, I was unaware of the processes and procedures of the administration of the fund.³⁵

195. President Oliver added:

I am telling you, right, wrong or indifferent, my focus was on, 'Are we going to spend \$10,000 for^{FOIA b6 & b7c} The mechanics of it, totally lost on me. . . . I just wasn't paying any attention to . . . how this was going to be handled in terms of process.

196. In response to our questions, President Oliver confirmed that he approved^{FOIA b6 & b7c} and^{FOIA b6 & b7c} requests for funds. He stated, however, that he thought the NPS comptroller made all the payments that he was approving.

197. In response to the question:

Q What is missing is there is no interaction with the comptroller. How do you explain that?

President Oliver stated:

A Well, I didn't know there was no -- I didn't know that was what was happening. I mean that is just it. All I can say is, 'I don't know how the transactions happened.' I was -- the same thing, I mean I was -- there you go.

198. President Oliver also denied knowing that the Foundation held the funds he was authorizing. He stated, "I didn't know that was what was happening. . . . Just ignorant of the process."

199. Most significantly, President Oliver affirmatively stated that the only method that he knew of using funds from the Foundation was out of funds controlled by the NPS Comptroller. President Oliver testified:

So when I say, when I said, 'Approve this,' I wasn't worried about how the money -- and the only experience

³⁵ President Oliver provided this response approximately 2 minute and 40 seconds into the interview.

I had to get money from the Foundation was getting it from the comptroller's office.³⁶

So shame on me, I never even thought that there was any other -- I didn't think about it. But I didn't know of any other way the money flowed. You know, except things the Foundation had bought on their own.

200. On August 3, 2012, in a subsequent interview, President Oliver was interviewed again. Most of the interview pertained to matters separate from the Foundation. Near the end of the interview we informed President Oliver that we had concerns that his prior testimony regarding the Foundation was not truthful. At that time President Oliver stated that with regard to the Foundation R&R account, "I didn't know the money wasn't coming over." President Oliver testified,

I'm not trying to be obtuse. I just didn't, I just am not quite sure because I guess I never really understood how the money flowed, you know. The fact that it was still in the Foundation and then bypassing a process just was not something that I was tuned in to at the time.

201. We asked FOIA b6 & b7c whether he believed it possible that President Oliver did not know that he was approving payments from the Foundation R&R account. He responded, "So he had to know that it was not coming from his account, and coming from our account. . . . He must have known."

202. FOIA b6 & b7c testified that he had a standing meeting with President Oliver scheduled for every Thursday. In response to the question, "And was [the Foundation R&R account] discussed at the Thursday meetings, do you know?", FOIA b6 & b7c responded, "Probably."

203. FOIA b6 & b7c has worked for President Oliver as his FOIA b6 & b7c since President Oliver arrived at NPS in 2007. She stated that based on her experience working for President Oliver she was aware of his general practice regarding his involvement in approving requests for funds. FOIA b6 & b7c stated, "he wants to know everything." She added, "My experience with Admiral Oliver, he pays close attention to any dollar amount he's approving."

³⁶ The e-mails that we addressed above between President Oliver, FOIA b6 & b7c, and NPS personnel belie this assertion. We noted that not a single e-mail regarding the Foundation Recruitment and Retention fund included the Comptroller or any personnel assigned to the Comptroller's office.

President's Office account

204. In 2009, the Foundation established an internal account called the President's Office account, which it held separate from the money that it formally gifted to NPS and that NPS accepted and retained in the President's Gift Fund. From this internal account the Foundation made payments to third parties on behalf of the President's Office or provided items of value to President Oliver from the Foundation Peacock Shop.³⁷

205. In 2009, there was a single expenditure of \$132.00 for postage made from this account. We could not determine for what the postage was used and whether it was for the benefit of the President's office or President Oliver.

206. In 2010, the Foundation made four expenditures from the President's Office account. These expenditures are listed in the Foundation records as:

- "Wine for President's reception," April 1, \$468
- "240 Holiday Cards from the NPS Foundation Peacock Shop," September 2, \$480
- "32 Holiday Cards from the NPS Foundation Peacock Shop," September 27, \$86.60
- "Wine for President's receptions," November 9, \$720

207. On September 1, 2010, FOIA b6 & b7c sent an e-mail, "Subject: Christmas Cards," to FOIA b6 & b7c in which she wrote:

I don't mean to nag you, but the JAG is telling us that we should not use the President funds to pay for Christmas Cards. My thought is, can you give us the Christmas Cards and withhold the cost of the cards from us in the next amount of dollars you give to the President?

208. On September 2, 2010, FOIA b6 & b7c forwarded the e-mail to the Foundation bookkeeper, FOIA b6 & b7c was cc'ed. He wrote:

We withheld \$3,000 from the \$10,000 we normally give the President each July. I think about \$400 or \$600

³⁷ The Peacock shop is the NPS Foundation gift shop located in Herrmann Hall, the NPS administration building.

was already used for wine. Please deduct \$480 for Christmas cards (240 X \$2).

209. In a letter addressed to President Oliver, dated September 2, 2010, FOIA b6 & b7c made a gift to NPS of "240 NPS-themed holiday cards ... for the use of the President to assist in promoting good will for the School during the coming holiday season." President Oliver accepted the holiday cards as a gift to the U.S. Navy.³⁸

210. In a letter addressed to President Oliver, dated November 17, 2010, FOIA b6 & b7c made a gift to NPS of eight cases of wine for "use at school receptions and other social functions." The letter stated that the value of the wine was \$720. President Oliver accepted the wine on behalf of the U.S. Navy.³⁹ The wine was purchased by the Foundation on November 9, 2010, with funds from the President's Office account.

211. In 2011, the Foundation made five expenditures from the President's Office account, listed in the Foundation records as:

- "CNO Reception-Stanley House," April 25, \$680.00
- "Senator Warner Dinner-President's Office," July 1, \$699.72
- "President's Graduation Speaker Reception," July 1, \$572.12
- "Reimbursement-NPS/NWC BOA Dinner Mtg.-Pres. Fund," July 18, \$190.30
- "President's Office Event," September 28, \$914.79

212. The invoice for the April 25 payment is from Morale Welfare and Recreation (MWR) to the Foundation for an event held on March 24, 2011. The charges are \$500 for liquor (hosted bar), \$100 labor (bartender), and an \$80 service charge. The invoice states there were 125 guests. There is a handwritten notation on the invoice: "CNO Roughead's sponsored reception at Stanley House-Pres. Acc't."

³⁸ The gift of the holiday cards were properly accepted in accordance with the Gift Fund instructions. The solicitation of the gift by FOIA b6 & b7c however, was improper.

³⁹ The gift of wine was properly accepted in accordance with the Gift Fund instructions.

213. The invoice for the "Senator Warner Dinner" is from MWR to the Foundation for an event held on May 25, 2011. The invoice states there were 14 guests. The charges are \$588 for food (14 meals at \$42 per meal) and an \$111.72 service charge.

214. The invoice for the "President's Graduation Speaker Reception" is from MWR to the Foundation for an event held on June 16, 2011. The invoice states there were 125 guests. The charges are \$407 for liquor (hosted bar), \$100 for labor (bartender) and a \$65.12 service charge.

215. The Foundation issued a check for \$190.30 to an NPS employee as reimbursement for a charge the employee had previously made to her personal credit card. In an e-mail, "Subject: NPS/NWC BOA Dinner Meeting," dated October 5, 2011, to ^{FOIA b6 & b7c} Institutional Relations, with a cc to ^{FOIA b6 & b7c} , the employee wrote:

Everything went perfectly with the BOA [Board of Advisors] dinner last week. NWC [Naval War College] paid ½ of everything. . . . Attached is the receipt for NPS's half of the wine. . . . As we previously discussed, I put this on my personal credit card.

216. ^{FOIA b6 & b7c} forwarded the e-mail to the Foundation bookkeeper, with the NPS employee and ^{FOIA b6 & b7c} cc'ed, and wrote: "Please make out a check . . . for \$190.30. Charge it against the President's fund that we hold."

217. The invoice for the "President's Office Event" is from MWR to the Foundation for an event held on September 21, 2011. The invoice states there were 125 guests. The charges are \$637.75 for liquor (hosted bar), \$175 for labor (bartender) and a \$102.04 service charge.

218. President Oliver testified that he did not know about the account. When interviewed on June 13, 2012, he stated: "I don't know anything about that. . . . I still don't. You're telling me new information."

219. When asked whether he knew about the payments made by the Foundation for the above listed events, President Oliver responded: "No, I can't really say yes or no to that. I mean my temptation is to say no because I can't recall." He added:

But somebody might have said, 'Hey, the Foundation is hosting this event for us.' And I might have said that was nice or something.

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220. Regarding the reimbursement of the NPS employee by the Foundation for one-half of the cost of wine for the Board of Advisor's dinner, President Oliver testified that he was aware that the employee was reimbursed. He added, "Exactly how that all happened. . . [I was] blissfully unaware."

221. Each of the events in 2011 but for the wine for the NPS/Naval War College Board of Advisors Dinner Meeting included payments for services.

Gifts of Personal Property for President Oliver's Use

222. President Oliver accepted at least two gifts of personal property from the Foundation that were not paid by funds from the Foundation R&R account or the President's Office account. Some time prior to 2009 the Foundation purchased a gas grill for President Oliver.⁴⁰ In July 2011, the Foundation purchased patio furniture for President Oliver. The Foundation did not pay for these gifts out of the Foundation R&R account or the President's Office account. The Foundation purchased the gas grill for President Oliver some time prior to 2009. The Foundation purchased the patio furniture in 2011.

223. President Oliver testified that he uses the gas grill and patio furniture for official functions at his residence, Stanley House, which is on the grounds of NPS. He stated that he is required to live at Stanley House.

224. On July 18, 2011, the Foundation issued a check payable to Pier 1 Imports for \$1,277. In an e-mail dated July 18, FOIA b6 & b7c directed the Foundation bookkeeper to issue a check to Pier 1 Imports for \$1,277.11. FOIA b6 & b7c added in the e-mail, "It is for patio furniture for Stanley House. President Oliver will make a donation to NPSF [NPS Foundation] for \$1,277." On July 20, President Oliver made a donation to the Foundation for \$1,300.

225. President Oliver testified that he purchased the patio furniture from Pier 1 Imports using his credit card and then spoke to FOIA b6 & b7c and FOIA b6 & b7c gave him a check from the Foundation, payable to Pier 1 Imports, to pay for the furniture. President Oliver then returned to the store and had them cancel the credit card payment and he gave them the Foundation's check.

⁴⁰ We did not review Foundation records for any time prior to 2009. President Oliver disclosed the purchase of the gas grill.

226. President Oliver said that he had not intended to donate the entire cost of the patio furniture to the Foundation. He testified: "I was only planning to give him about half of it, I mean about \$500, that was my plan." President Oliver could not recall why he donated more than \$500 to the Foundation.

227. President Oliver stated he "might" have included the \$1,300 charitable contribution in his Federal income taxes. He added,

it doesn't matter because I am under, you know, that, what the minimum -- alternative minimum tax anyway. It's not like it matters.⁴¹

228. President Oliver testified that the gas grill and patio furniture were not his property and belonged to NPS. He stated:

I moved in with a suitcase and a television and I probably won't take the TV when I leave. But, I mean, the rest of it belongs to them.

229. President Oliver said that FOIA b6 & b7c, the Foundation FOIA b6 & b7c, had asked him "a number of times" whether President Oliver needed anything for Stanley House. He told us that he accepted FOIA b6 & b7c offer and identified the gas grill and patio furniture.

Terminating Acceptance of Gifts Not In Accordance with Statute and Instructions

230. On February 21, 2012, FOIA b6 & b7c sent an e-mail to President Oliver and FOIA b6 & b7c in which he stated that the IG interviewed him about his knowledge of NPS employees requesting and receiving reimbursements from the Foundation. He wrote:

He surprised me by describing a "process" where a faculty member can fill out a form for reimbursement of a miscellaneous expense and submit to the Foundation, who in turn sends a check to the individual. Believe it or not, in the almost seven years I have been here, I was unaware of this.

FOIA b6 & b7c added:

⁴¹ President Oliver is mistaken. The alternative minimum tax does not limit deductions for charitable contributions.

Now that I have specific knowledge, it is my fiduciary responsibility as the Comptroller to advise you that in my fiscal opinion, this practice has to stop.

231. On February 22, 2012, President Oliver responded to FOIA b6 & b7c with cc's to FOIA b6 & b7c ; the FOIA b6 & b7c FOIA b6 & b7c , NPS FOIA b6 & b7c ; FOIA b6 & b7c , NPS FOIA b6 & b7c FOIA b6 & b7c ; and FOIA b6 & b7c . President Oliver wrote:

I didn't know of it either and don't know how/when this got started, but FOIA b6 & b7c tells me that the Foundation will no longer reimburse individuals going forward.

Prior NAVINSGEN NPS Senior Official Investigation

232. On November 30, 2009, NAVINSGEN issued Report of Investigation (ROI) Number 200900253, stemming from allegations of misuse of appropriated funds by VADM Philip M. Quast (Ret).⁴² From 2002 to 2010, VADM Quast served as the Navy's Executive Learning Officer assigned to the Center for Executive Education (CEE) at NPS. Currently, VADM Quast is a Senior Fellow, United States Partnership for Peace Training Center, at NPS.

233. The IG concluded that VADM Quast and CEE Government and contractor employees purchased alcoholic and non-alcoholic beverages for official events. Thereafter, reimbursement was requested from the Foundation in letters to the Foundation on Executive Learning Officer letterhead to which receipts were attached. VADM Quast and the Government and contractor employees received checks from the Foundation for the amounts they requested.

234. The ROI included a substantiated allegation that VADM Quast:

on more than one occasion improperly accepted gifts on behalf of the Navy from the NPS Foundation, in violation of 10 USC § 2601, SECNAVINST 4001.2J, and NAVPGSCOLINST 4001.1D.

235. In a letter dated May 27, 2010, President Oliver informed NAVINSGEN that he had reviewed the ROI and taken action against VADM Quast for his "substantiated ethical violations."⁴³

⁴² The report, with VADM Quast's name left in, has been released under the Freedom of Information Act.

⁴³ We could not determine when the ROI was provided to President Oliver.

President Oliver listed as one of the ethical violations which he discussed with VADM Quast and for which he took action against VADM Quast was that VADM Quast "accepted gifts on behalf of the Navy from the NPS Foundation."⁴⁴ Included in the corrective action taken, President Oliver wrote that VADM Quast's term appointment as the Navy's Executive Learning Officer was not renewed and "a formal letter documenting the above mentioned discussion was delivered to VADM Quast."

236. The record reflects that sometime after November 2009 and before May 27, 2010, President Oliver read the ROI. He knew that the IG concluded it is improper for the Foundation to directly reimburse NPS employees for expenses they incur. We also note that subsequent to May 27, 2010, President Oliver approved at least one request for \$1,120 from the Foundation R&R account to reimburse NPS personnel for expenses and personally requested the Foundation purchase patio furniture from a third-party vendor for use at his quarters. Because President Oliver's knowledge of the contents of that report reflects on the reasonableness of his actions and the credibility of his assertion that he did not know the Foundation was retaining a recruiting and retention account from which it would make direct payments to NPS personnel, we include pertinent excerpts of this report in Appendix C for the reader's review.

Foundation 2012 Gift Giving Practices

237. We noted that, since February 2012, the Foundation has made monetary gifts to the Navy for the benefit of NPS in an aggregate amount of nearly \$100,000. Prior to our investigation the Foundation retained accounts for various NPS staff and faculty from which the Foundation made reimbursements for expenses incurred to support NPS and its mission. In a few instances we determined that NPS faculty requested, and were paid from the accounts, money unrelated to NPS and purely for personal gain. We will address these accounts and payments in follow-on reports of investigation.

238. Based on a conversation with ^{FOIA b6 & b7c}, we understand that, in response to our investigation, the Foundation has decided to no longer retain accounts from which it will reimburse faculty and staff for expenses related to NPS support.

⁴⁴ The ROI addressed in detail the applicable authorities under which gifts can be accepted on behalf of the U.S. Navy and included: "Proper procedures for receiving gifts from the NPS Foundation would involve the NPS President, Legal Office, and Comptroller. ..." President Oliver was clearly on notice of the proper procedures for accepting gifts from the Foundation.

Instead, the Foundation has offered the money it had been keeping in those accounts to NPS. NPS records indicate it has accepted those offers in accordance with applicable gift instructions.

Analysis

239. We conclude President Oliver solicited and accepted gifts of money, personal property, and services from the Foundation on behalf of the U.S. Navy in violation of 10 USC 2601, SECNAVINST 4001.2J, OPNAVINST 4001.1F, NAVPGSCOLINST 4001.1E, and NAVPGSCOLINST 4001.2B for the reasons stated below.⁴⁵

240. We found overwhelming evidence that, in late 2008 and early 2009, President Oliver was instrumental in the late decision to create the Foundation R&R account rather than give a gift of money to the Navy for the benefit of NPS. Thereafter, he approved reimbursement of expenses incurred by NPS personnel, and direct payments to third-party vendors, from the Foundation R&R account to support NPS activities. Despite his statements to the contrary, we conclude President Oliver knew the reimbursements he was approving would come from money maintained in Foundation accounts because FOIA b6 & b7c was involved in the transactions, indicating he would distribute funds held by the Foundation only after President Oliver approved the use of those funds for the requested purpose.

241. We further conclude that President Oliver's effective control of the use of funds in this account amounted to acceptance by him of \$50,000 on behalf of the U.S. Navy when he first learned the Foundation intended to make this (second) gift of \$50,000, even though at the time it could reasonably be construed as the offer of a future gift. President Oliver failed to forward this offer to CNO for action, as required by paragraph 6d of the SECNAV Gift instruction. Had he done so, the language of the SECNAV instruction indicates CNO could have authorized him to accept the future or installment gifts over time, even if they exceeded his own acceptance threshold.

242. There is insufficient evidence to conclude that President Oliver solicited the Foundation for the \$50,000 gift. FOIA b6 & b7c testified he could not recall if the Foundation R&R account was established based on a request by NPS. He testified, "I don't know whether it was our initiative or the

⁴⁵ By separate correspondence we are recommending that FM&C examine all the gifts President Oliver accepted in violation of the gift process to determine whether the gifts can be retroactively accepted by the U.S. Navy.

school's initiative to say why don't you keep the money." Based on the evidence we were able to develop, however, we do conclude that FOIA b6 & b7c solicited funds, in violation of the SECNAV and NPS gift instructions, when he sent his 1 December 2008 e-mail to FOIA b6 & b7c to request the Foundation provide \$10,000 to cover the expense of bringing the Nobel Laureate to NPS.

243. Because we find President Oliver effectively, albeit improperly, accepted this second gift of \$50,000 from the Foundation, we do not conclude that each NPS employee who subsequently sent some form of document to the Foundation requesting funds from the Foundation R&R account (or the purchase of items from a third-party vendor) to have engaged in an improper solicitation. Since President Oliver had already indicated his intention to accept Foundation gifts for that purpose, the other NPS personnel did not "initiate" a request for a gift from the Foundation. We do conclude, however, that they improperly requested reimbursement from the Foundation, in violation of paragraph 7 of the NPS gift instruction. The proper action would have been to request NPS present a check to the Navy for deposit in NPS Faculty Recruitment and Retention Fund. Then the employee could have requested the Comptroller reimburse the employee using funds maintained in the NPS account.

244. With regard to the President's Office account maintained at the Foundation, we similarly concluded that President Oliver accepted gifts from the Foundation on behalf of the U.S. Navy and that this acceptance was not in compliance with the applicable authorities.

245. While President Oliver testified that he was unaware of this account, he testified that he may have been told that the Foundation was hosting an event and responded, "that was nice or something." He also testified of his knowledge reimbursement to an employee for the cost of wine at the Board of Advisor's event, but stated, "Exactly how that all happened. . . [I was] blissfully unaware."

246. Based on his testimony, we conclude that President Oliver had sufficient reason to know that the Foundation paid for these items, including services. We also conclude that, based upon his role in the gift acceptance process at the NPS, he knew, or should have known, that the gifts had not been formally

processed for acceptance and use as required by Navy and NPS instructions.⁴⁶

247. If the Foundation had in fact properly hosted an event, President Oliver would have reviewed and accepted or declined the gift proffered by the Foundation as he had done on many other occasions. Accordingly, President Oliver knew or should have known that the gifts were not formally proffered by the Foundation nor formally accepted for use by the NPS and that the failure to do so was inconsistent with the gift acceptance processes required by law and regulation.

248. There is insufficient evidence to conclude that President Oliver solicited the Foundation with regard to the establishment of the President's Office account or individual expenses from the account.

249. Regarding the gas grill and patio furniture, we determined that President Oliver accepted these gifts from the Foundation on behalf of the U.S. Navy and that this acceptance was not in compliance with the applicable authorities. With regard to gifts of personal property other than cash and checks, President Oliver was aware that there was a proper process to accept such gifts. We noted above that from 2007 to 2011 the Navy accepted 43 gifts of personal property. Of these 43 gifts, President Oliver accepted 35 of them.

250. There is sufficient evidence to conclude that President Oliver solicited the Foundation to provide the gas grill and patio furniture in violation of the applicable authorities. President Oliver testified that he asked the Foundation to purchase these items. He stated that he made the requests because FOIA b6 & b7c had asked him "a number of times" whether President Oliver needed anything for Stanley House.

251. While it may be appropriate in certain circumstances for a donor to indicate to NPS its intent to donate a sum certain in the future, solicit NPS's needs for this future gift, and for NPS to provide a formal list of needs, that is not what occurred in this instance.⁴⁷ Rather, based on President Oliver's

⁴⁶ Specifically, OPNAVIST 4001.F delegates acceptance authority to the NPS President for gifts less than \$12,000 and NAVPGSCOLINST 4001.1E specifies that the President is only person at NPS who is authorized to accept gifts on the behalf of NPS/DoN.

⁴⁷ We note that the U.S. Naval Academy has a procedure for identifying needs and making them known to potential outside donors in a way that is not construed as improper solicitation. Although the NPS gift instruction discusses the use of an NPS Gift Council to establish and prioritize its

testimony, FOIA b6 & b7c made an open ended invitation to make purchases for Stanley House. We conclude this "invitation" was simply too vague to constitute the offer of a gift to be donated at a later date. There was no intent to donate in the future expressed. Further, there was no identification of needs prepared by NPS. Therefore, President Oliver's subsequent request constitutes an improper solicitation.

252. With regard to the patio furniture, President Oliver testified he initially paid for the furniture with his personal credit card. He then spoke with FOIA b6 & b7c about the Foundation paying for the furniture and FOIA b6 & b7c had the Foundation issue a check for the furniture. President Oliver then brought the check to Pier 1 and paid for the furniture with the Foundation's check and had the store credit his credit card account. The facts established that there was no identification of NPS's needs. Absent a process for identifying NPS's needs, the requests for the gas grill and patio furniture appear no more than President Oliver's personal desires.

253. We also determined that President Oliver permitted NPS employees to accept reimbursement for their expenses directly from the Foundation. Such reimbursement was in violation of 10 USC 2601 (requirement to deposit monetary gifts in the U.S. Treasury), SECNAVINST 4001.2J (paragraph 7 gift processing instruction), OPNAVINST 4001.1F (NPS President authority limited to \$12,000), NAVPGSCOLINST 4001.2B (individuals must request reimbursement for mission-related expenses from President's Gift fund), and, most significantly, NAVPGSCOLINST 4001.1E, which contains language expressly prohibiting reimbursement of NPS personnel expenses by non-Federal entities (paragraph 7). Further, President Oliver knew NPS employees were being reimbursed for expenses directly from the Foundation in violation of the NPS Gift instruction, and permitted it.

254. Multiple e-mails from NPS faculty and staff to FOIA b6 & b7c requesting cash from the Foundation R&R account were forwarded to President Oliver. The e-mails began on December 4, 2008, when FOIA b6 & b7c forwarded to President Oliver FOIA b6 & b7c e-mail requesting \$10,000 for FOIA b6 & b7c visit. Rather than reinforcing the need to comply with existing gift acceptance processes, President Oliver approved FOIA b6 & b7c plan to withhold money that the Foundation had intended to gift to NPS.

needs, NPS does not have an appropriate mechanism to identify those needs to the public and President Oliver did not run the patio furniture of grill through the Gift Council process.

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255. As discussed above, President Oliver received e-mails through December 2010 in which FOIA b6 & b7c and FOIA b6 & b7c solicited FOIA b6 & b7c for funds from the Foundation R&R account. In each instance, President Oliver authorized FOIA b6 & b7c to make payments from the Foundation R&R account.

256. President Oliver failed to exercise leadership at minimally expected level when he permitted NPS personal to seek reimbursement from the Foundation and condoned the Foundation's reimbursement of the expenses incurred by NPS personnel for recruiting and retention efforts. Rather than set an example for exemplary behavior, President Oliver was an integral part of the problem.

257. We found President Oliver's conduct aggravated by his knowledge of, and his role in taking corrective action following the Quast investigation. Specifically, President Oliver knew, or should have known, that soliciting and failing to process gifts provided by the Foundation violated the standards of conduct and gift rules. It is noted that President Oliver read the VADM Quast ROI sometime after November 30, 2009 (when the IG issued the Quast ROI) and before May 27, 2010 (the date President Oliver notified the IG of the corrective action taken against VADM Quast).

Conclusion

258. The allegation that President Oliver solicited and accepted gifts from the Foundation on behalf of the U.S. Navy, in violation of 10 United States Code (USC) 2601, General Gift Funds; SECNAVINST 4001.2J, Acceptance of Gifts; OPNAVINST 4001.1F, Acceptance of Gifts; NAVPGSCOLINST 4001.1E, Policies and Procedures for Gift Administration, Gift Acceptance and Event Sponsorship for the Naval Postgraduate School; and NAVPGSCOLINST 4001.2B, Policy on President's Gift Fund, is substantiated.

Observations Pertaining to Gift Acceptance Activities

Solicitation Issues

259. For years, this office has observed and reported on gift acceptance issues generated by the existence of charitable "support organizations" affiliated with the Naval Academy. In 1994, we undertook a major study, starting with the creation of the Naval Academy Athletic Association in 1891 to support Academy athletics and fund the cost of midshipmen travel to West

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Point to play football against Army.⁴⁸ We found the propriety of solicitation has been a consistent question over the years. We read Superintendent Sellers' letters to private companies (requesting they donate funds necessary to construct the Academy museum during the Depression) and learned his fundraising efforts led to enactment of the law now codified at 10 USC 6973, which authorizes acceptance of gifts on behalf of the Academy and Academy Museum and provides statutory authority for the Naval Institute and the Naval Academy Athletic Association, the major donors of Preble Hall construction funds, to maintain offices on Academy property.

260. Given the 2001 Office of Legal Counsel Opinion that finds statutes similar to 10 USC 2601 and 6973 implicitly authorize solicitation, we recommend SECNAV consider issuing regulations that permit, but under appropriate controls, solicitation on behalf of the Academy and open a dialogue with the other DoD Secretaries to explore the reasonableness of lifting the Financial Management Regulation prohibition of solicitation of gifts under 10 USC 2601. Doing so would eliminate the need for some questionable practices we have observed, such as allowing the Academy Superintendent or NPS President to give speeches describing their institutions' "needs" at events whose purpose includes fundraising, but requiring them to leave the event before supporting organization personnel make the fundraising "pitch" to attendees.

Aggregation Issues

261. We found two letters dated 4 October 2011 from the Foundation that offer gifts of \$10,000 and \$6,000, respectively, for identical purposes. We questioned whether the offers demonstrated an improper attempt, by the Foundation or NPS, or both, to circumvent President Oliver's gift acceptance authority and but decided not to include an allegation about this because we did not identify the original source of the funds the Foundation offered that day and the Foundation's intent in sending two letters containing the same language that were dated the same day.

262. We reviewed the 7 November 2011 report of the DoDIG audit of Naval Academy gift acceptance practices, number DoDIG-2012-017, which is available on the DoDIG public website. The audit finds a series of gifts should have been aggregated but were not to avoid exceeding the Superintendent's authority. We believe the DoDIG view of "future gift" aggregation issues expressed in

⁴⁸ Navy won the first game at West Point in 1890, 24 to 0.

that report may differ from the treatment of this matter in paragraph 6d of the SECNAV gift instruction. Specifically, we are concerned that DoDIG may expect all installment or partial payments, regardless of amount, to be accepted by the person who has authority to accept the aggregate amount. We will attempt to obtain clarification from DoDIG and make any recommendations for changes in the SECNAV instruction that may be appropriate.

Concealment of Prohibited Sources

263. The DoDIG November 2011 Naval Academy audit determined that neither the Academy nor its supporting Foundation had been reviewing offers of gifts to determine whether they were coming from prohibited sources, which triggers additional review requirements before acceptance. We found no evidence that NPS or its supporting Foundation are making and documenting such inquiries and recommend they do so. The concerns raised by DoDIG about prohibited sources also may pertain to the aggregation issue. While the report may be read to indicate DoDIG believes the amount of the donation coming from a supporting foundation determines the gift's value for determining who has acceptance authority, the discussion of prohibited sources appears to suggest a single offer from a supporting foundation should be analyzed as a compilation of gifts from the underlying sources. We will also attempt to obtain clarification on this matter.

Candor

264. We found most people we interviewed candidly admitted that NPS personnel occasionally asked the Foundation for reimbursement of expenses because of a concern that it would be improper or at least inappropriate for NPS to make such expenditures from its own gift fund accounts. As an example, some witnesses stated that while it would be inappropriate for NPS to reimburse expenses for meals that included wine, there was no problem with the Foundation making such payments. They also indicated the concern that higher authority would not approve a Navy payment of a \$10,000 honorarium to the Nobel Laureate was a factor leading to the decision that the Foundation would pay him directly. Indeed, ^{FOIA b6 & b7c} observed that the Foundation could be used to do things for NPS that would be considered inappropriate for NPS to do itself.

265. By contrast, we found President Oliver's refusal to acknowledge he knew of the existence of the Foundation R&R account displayed a remarkable lack of candor. One need only look at his statements to investigators, his e-mail exchanges

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with FOIA b6 & b7c , his knowledge of the VADM Quast investigation, and his role in the school's gift acceptance process to appreciate how much information President Oliver failed to fully disclose during the multiple interviews we conducted with him concerning monetary gifts by the Foundation.

266. During our interviews, we asked President Oliver about the Foundation R&R account. He repeatedly denied knowing that the Foundation retained an account from which he was authorizing payments. He testified that he did not know about the process for administering the fund from which he was authorizing payments. He further stated that the only process he knew for using money from the Foundation was through the NPS Comptroller's office. We found the following statements notable for their lack of candor:

- I was unaware of the processes and procedures of the administration of the fund.
- I don't know how the transactions happened.
- I didn't know that [funds he approved were from the Foundation] was what was happening. ... Just ignorant of the process ...
- The only experience I had to get money from the Foundation was getting it from the Comptroller's office But I didn't know of any other way the money flowed.
- The fact that it was still in the Foundation and then bypassing a process just was not something that I was tuned in to at the time.

267. President Oliver's statements cannot be viewed as credible in light of his e-mail exchanges (paragraphs 179 and 186) with FOIA b6 & b7c in which he asked FOIA b6 & b7c (not the NPS Comptroller or any person employed in the Comptroller's office) how much money was left in the account and where he directed FOIA b6 & b7c to make funds available to NPS personnel. Therefore, we concluded President Oliver's testimony was false and misleading.

268. We note that in response to the question "And do you know about the recruitment and retention account that was held at the foundation?" President Oliver responded "Yes. I -- yes, I did." However, less than 2 minutes later as he elaborated on what he knew about the account, President Oliver denied knowing that the account was held by the Foundation. Thereafter, President Oliver made repeated untruthful statements regarding his knowledge of the Foundation R&R account.

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Recommendations

269. In light of the inappropriate conduct of so many NPS personnel, as addressed in this report and the others that follow, we recommend SECNAV rescind NPS gift acceptance authority pending revision of the NPS gift instruction and completion of a program of training.

270. In light of the Foundation's complicity in the efforts to circumvent gift acceptance rules, we recommend SECNAV assess the reasonableness of permitting any relationship between NPS and the Foundation to continue, beginning with an examination of the propriety of allowing the Foundation to occupy space on NPS property since there is no Congressional authorization for this. The Foundation, whose primary purpose is to support NPS, appears willing to undertake actions on behalf of NPS that Foundation leadership knows would be improper if attempted by NPS itself. This is inexcusable and intolerable.

Allegation Six: Excessive and Wasteful Overseas Travel

That President Oliver engaged in excessive and wasteful travel to overseas locations in violation of the Joint Travel Regulations (JTR), Volume 2, Part A, Section C2000, Obligation to Exercise Prudence in Travel.

Applicable Standard

271. The JTR, Volume 2, apply to Department of Defense civilian employees. Part A, Section C2000, Obligation to Exercise Prudence in Travel, requires that a traveler "must exercise the same care and regard" in official government travel "as would a prudent person traveling at personal expense." Section C2000, therefore, prohibits excessive and wasteful official government travel.

Findings of Fact

272. Complaints alleged that President Oliver engaged in excessive and wasteful travel to overseas locations. We reviewed President Oliver's travel vouchers for overseas travel for all of 2010 through October 2011. Additionally, President Oliver provided contemporaneously prepared itineraries and agendas. We also interviewed President Oliver about his travel.

273. For the period of review, President Oliver took six overseas trips and was in a TDY status for 32 days. He traveled

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to Istanbul, Turkey (May 16 - 19, 2010); Singapore (July 4 - July 7, 2010); Seoul and Taejon, Korea (July 31, - August 5, 2010); New Dehli and Pune, India (February 1, - February 9, 2011); Krakow and Warsaw, Poland (May 27 - June 2, 2011); and Singapore (July 8 - July 15, 2011). Of the 38 days, President Oliver was in a travel status for a portion of at least 14 days.

274. President Oliver testified the Istanbul and Poland trips were for the annual Conference of Commandants of Partnership for Peace educational institutions.⁴⁹ He stated that the in 2011 the conference was held in Krakow and that while in Poland he went to Warsaw to visit the Military University of Technology. President Oliver testified that the Military University of Technology "is sort of like the Polish Naval Postgraduate School" and while there he represented NPS by signing a letter of accord with the Military University of Technology.

275. President Oliver said that he traveled to Singapore in July 2010 to present the commencement speech at the graduation ceremonies at the National University of Singapore. President Oliver added that the National University of Singapore and NPS offer a joint degree program. President Oliver could not recall whether there were any NPS students at the ceremony. He testified that Singapore has for many years provided a significant number of students who study at NPS and that they pay tuition, which he characterized as "very valuable."

276. President Oliver testified that he traveled to Korea to attend the 40th Anniversary Symposium of the Agency for Defense Development. He said he was one of the "featured speakers" at the symposium. President Oliver added that while at Korea, he met with the U.S. Forces Korea commander.

277. In February 2011, President Oliver traveled to India. He testified that he met with personnel at an Indian government research agency and at the Indian Defense Institute of Advanced Technology (India's NPS equivalent). While in India, President Oliver signed a letter of accord with the research agency. He testified that as a result of his trip, a delegation of 11 Indians came to NPS for a conference on counterterrorism. President Oliver testified that he anticipated increased ties between NPS and India.

⁴⁹ In May 2004, the U.S. Secretary of State designated the Naval Postgraduate School as the United States' only NATO Peace Training and Education Center.

278. In July 2011, President Oliver traveled again to Singapore. President Oliver stated that the reason for this trip was to attend the graduation at Nanyang Technological University, Singapore. President Oliver testified that NPS had a 10 year relationship with Nanyang Technology University and the anniversary of the relationship was celebrated. He also stated that while at Singapore he met with the Singapore director of economic development.

Analysis

279. President Oliver established through his testimony and documentary evidence a valid, official purpose for each of his overseas trips. He also established that he did not unreasonably extend the time he was in travel status.

Conclusion

280. The allegation that President Oliver engaged in excessive and wasteful travel to overseas locations in violation of the Joint Travel Regulations (JTR), Volume 2, Part A, Section C2000, Obligation to Exercise Prudence in Travel, is not substantiated.

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Appendix A - Excerpts from NPS 2012 Command Inspection Report

Gift Acceptance. The acceptance of gifts of real and personal property, to include funds, by DON, for the benefit of NPS, is authorized by several statutes and guided by various agency regulations and instructions. The gift acceptance authority most often relied upon for acceptance of gifts to NPS is Title 10 U.S.C. 2601, which authorizes SECNAV to accept gifts for the benefit of, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary. Gifts of money or proceeds accepted under this authority are deposited in the U.S. Treasury in the fund entitled "Navy General Gift Fund." In addition, NPS utilizes the authority of Title 31 U.S.C. 1353 to accept gifts of travel and related expenses. The statutory requirements for accepting gifts are implemented by SECNAV, CNO, and NPS instructions.

(1) SECNAVINST 4001.2J establishes acceptance criteria for gifts accepted by SECNAV, the Under Secretary of the Navy, and personnel with delegated gift acceptance authority. Additionally, this instruction delegates authority to the CNO, the Vice Chief of Naval Operations (VCNO), and the Director of Navy Staff to accept gifts (other than real property), worth \$60K or less, offered to any institution or organization under the CNO command. Further, their authority to accept gifts of a value of \$12K or less may be delegated.

(2) OPNAVINST 4001.1F specifically delegates to the President authority to accept gifts (other than real property), worth \$12K or less, under Title 10 U.S.C. 2601 and Title 31 U.S.C. 1353. NPS has several instructions implementing the authorities of the various gift acceptance statutes.

(3) NAVPGSCOLINST 4001.1E was issued on 6 December 2006. It sets forth the policies, procedures and responsibilities governing the acceptance and administration of gifts to the NPS, as well as policies, procedures and responsibilities governing event sponsorship. As NAVPGSCOLINST 4001.1E predates SECNAVINST 4001.2J and OPNAVINST 4001.1F, it still references the gift acceptance authority of the President as \$10K or less (OPNAVINST 4001.1F raises the authority to \$12K). Additionally, NAVPGSCOLINST 4001.2B, issued on 5 August 2009, establishes policies and procedures for the administration of the President's Gift Fund. The President's Gift Fund is deposited in the U.S. Treasury and is composed of donations of funds that

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are available for expenditures for any purpose within the mission of the NPS and at the discretion of the President. The President's Gift Fund is funded through gifts offered by donors and accepted by DON. The Fund is administered by the Protocol Officer and the Account Managers who are delegated authorized use of the President's Gift Fund.

c. *Distribution of President's Gift Fund.* Gifts of funds from the Foundation to the President's Gift Fund were obtained for 2007 to 2012, year to date. The amounts are as follows: 2007 (\$90K); 2008 (\$61K); 2009 (\$57K); 2010 (\$66K); 2011 (\$73K); and 2012 (\$88,846). Appendix C provides a breakdown by account managers for 2007 to June 2012.

d. Gifts that were offered by the Foundation for the President's Gift Fund and properly accepted by NPS, per the applicable instructions, were deposited in the Navy General Gift Fund. Per NAVPGSCOLINST 4001.2B, gift funds from the President's Gift Funds could be expended by the Protocol Officer and Account Managers. The Protocol Officer prepared an annual budget of the President's Gift Fund for approval prior to the beginning of each calendar year with amounts authorized for each Account Manager. Concurrence of the SJA and NPS Comptroller was to be obtained if the intended use of the gift funds was in question. A central log was maintained in the Protocol office listing all purchases and grants made using gift funds received. Account Managers could only expend the amount specified in the annual budget unless additional authorization from the President was obtained. Additional authorization from the President must be requested in writing using the form contained in the instruction. The Protocol Officer conducted monthly reconciliation of the President's Gift Fund with the Comptroller. The Protocol Officer briefs the President on the status of the fund upon the completion of the monthly reconciliation.

e. However, the President's Gift Fund is only part of the gift equation at NPS. Based on the records, it appears that the Foundation sets up accounts retained at the Foundation from which NPS employees improperly accepted, and possibly solicited, gifts in violation of the applicable standards and processes contained in the gift instructions. On many occasions, NPS employees sought reimbursement of certain expenses from the Foundation, or the Foundation made payments directly to vendors on behalf of the NPS. Findings from a prior IG report provide an example of this practice:

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(1) On 30 November 2009, NAVINSGEN issued an investigation report into allegations of misuse of appropriated funds. The report contained substantiated allegations that the Executive Learning Officer and staff members improperly accepted gifts on behalf of DON from the Foundation. Specifically, the Executive Learning Officer and staff members purchased alcoholic and non-alcoholic beverages that were served at official events with their own money and then submitted receipts to the Foundation for reimbursement.

(2) In a letter dated 27 May 2010, the President informed the NAVINSGEN that corrective action had been taken against the Executive Learning Officer for ethical violations to include accepting gifts on behalf of DON from the Foundation. Despite the findings of this prior investigation report, the President and his staff continued, at least until September 2011, to improperly accept gifts on behalf of DON from the Foundation.

f. Distinct from the earlier identified, properly made and accepted Foundation gift of \$50K to NPS "for expenses related to faculty recruitment and retention," on 1 February 2009, the Foundation established a second account to promote NPS recruitment and retention with a balance of \$50K. This account was not gifted to DON, but was retained by the Foundation. The President controlled this account and could authorize expenditures from the account. The President authorized expenditures from this account of over \$29.7K in 2009; \$15K in 2010; and \$3K in 2011, for reimbursements to NPS personnel or payments made by the Foundation on behalf of NPS personnel. The Foundation stated that the second recruitment and retention account was established because there were limitations on the use of gift funds properly accepted and deposited in the Navy General Gift Fund. Part of the impetus for the establishment of the second recruitment and retention account came from a desire by the NPS to have a Nobel Laureate to speak at the School in February 2009. The Nobel Laureate requested a \$10K honorarium; however, honoraria from NPS were limited to \$2K, as per the Financial Management Regulation, Volume 10, Chapter 12, paragraph 1208. In addition to the \$10K honorarium, the Foundation paid from the recruitment and retention account held by the Foundation \$851.42 for expenses related to the Nobel Laureate visit. The Foundation also funded from the recruitment and retention account held by the Foundation the travel expenses for spouses of applicants invited to the NPS for Dean or Professor interviews. In a brief review of the Foundation's records, NPS paid for the applicants' travel expenses, but seemingly solicited or appeared to solicit, given several

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statements made by Foundation representatives, the Foundation for the spouses' travel expenses. Foundation records show that the recruitment and retention account held by the Foundation also made payments for receptions, faculty candidate meals, workshops, refreshments, wine, working meals, hosting foreign delegations, course speakers' dinners and dinners with research sponsors.

g. In May 2009, pursuant to a request from the Executive Assistant for the Dean, School of International Graduate Studies, the Foundation made available \$2,500 from the Foundation recruitment and retention account. In January and December 2010, pursuant to additional requests, the Foundation made available \$2K and \$1,120 to the Dean, School of International Graduate Studies from the Foundation recruitment and retention account. All these requests were routed by the President, who authorized, but never properly accepted them as gifts to DON. These examples give the appearance of NPS staff members seeking funding or reimbursement from the Foundation, actions which may be viewed as solicitation, in violation of the SECNAV gift acceptance instruction. Additionally, the Foundation established several additional accounts held by the Foundation for the benefit of NPS personnel. The Foundation set up a President's Office Account for the benefit of the President. From that account the Foundation made payments to third parties on behalf of the President's office or provided items of value from the Foundation Peacock (gift) shop. In 2009, the Foundation paid \$132 for the President's office postage. In April 2010, the Foundation provided wine for a President's reception (\$480); in early September 2010, pursuant to a request from the President's Executive Assistant, the Foundation provided 240 holiday cards from the Peacock shop (the cards were properly accepted by the President as a gift to DON); in late September 2010, the Foundation provided an additional 32 holiday cards from the Peacock shop; and in November 2010, the Foundation provided wine for a President's reception (\$720) (the wine was properly accepted by the President as a gift to DON). In April 2011, the Foundation paid for a CNO reception (\$680 to MWR); in July 2011, the Foundation paid for a Senator Warner Dinner (\$699.72 to MWR); in July 2011, the Foundation reimbursed a School employee for a charge to her personal credit card for a Joint NPS/NWC Board of Advisors Meeting and Dinner (\$190.30); and in September 2011, the Foundation paid for a President's office event (\$914.79 to MWR). For the three MWR catered events, the Foundation was directly invoiced by MWR. In addition to the President's Office Account held by the Foundation, the Foundation made several payments on behalf of the President. In January 2010, the Foundation paid a merchant \$799.43 for furniture reupholstering; in July 2011, the

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Foundation paid Pier 1 Imports \$1,277 for patio furniture for the President's quarters. According to Foundation records, later in July 2011, the President made a donation to the Foundation of \$1,300. In August 2011, the Foundation paid a moving and storage company \$783.99 for furniture delivery to the President's quarters.

h. The Foundation records also show that it established a Provost's Account which was held by the Foundation. The account was originally established with a balance of \$5K in 2009. The Foundation deposited an additional \$5K in 2010 and \$5K in 2011. In 2009, the Foundation made five payments from the Provost Account for \$3,887.23. In 2010, the Foundation made payments totaling \$3,331.86 from the Provost's Account. In 2011, the Foundation made payments totaling \$3,823 from the Provost account. In 2012, the Foundation made one payment from the account for \$423.71. Funds paid on behalf of NPS and NPS personnel from accounts held at the Foundation were never properly accepted as gifts to DON, and give the appearance NPS personnel may be improperly soliciting gifts in violation of the gift instruction.

i. A common theme that pervades the use of accounts held by the Foundation is what appears to be the intent by NPS personnel to circumvent any rules regarding the proper acceptance and use of gift funds. Regarding this practice, a common response from NPS personnel, especially if the event or function included alcohol, was that they wanted to avoid any restrictions imposed upon the use of government funds, to include gift funds properly accepted by DON. Another concern is the understanding of solicitation of a gift by NPS personnel; NPS personnel believe that asking the Foundation for funds or reimbursement of expenses is not a solicitation because the Foundation had offered to help in the past. The payment of invoices or reimbursement of expenses from the Foundation accounts that are not properly accepted as gifts appears to be an intentional attempt to evade the rules.

RECOMMENDATIONS

076-12 That SECNAV direct NPS to initiate in-depth ethics training for faculty, staff, and students under the direction of OGC and JAG; the training should also include training on the proper gift acceptance and the prohibitions regarding the solicitation of gifts.

077-12 That GC, in coordination with JAG and ASN (FM&C), examine the relationship between NPS and the Foundation; inter

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alia, and recommend to SECNAV clear guidelines for future interaction between NPS and the Foundation, to include a new MOU. The review should also include whether the Foundation remains on NPS and allowed special privileges, such as reserved parking, utilities, telecommunications, office space, etc.

078-12 That NPS update its gifts acceptance instruction to require an OGC/OJAG review.

5. Fundraising. A final area of concern is the involvement of NPS personnel, particularly the President and Provost, by their personal appearances at fundraising events in conjunction with the Foundation, specifically the Foundation Executive Director. In what amounts to "joint" appearances before potential contributors and corporate sponsors, the President and Provost make an overview speech of potential services NPS would offer members of the audience. Following the overview speech, the NPS representative(s) departs the room and the Foundation Executive Director then makes "fundraising" requests. NAVINSGEN considers this practice inappropriate and a possible violation of law.

RECOMMENDATION

079-12 That GC provide SECNAV a legal opinion concerning the appropriateness of current gift acceptance practices and what actions, if any, SECNAV should take.

Appendix B - Foundation Gifts 2007 - 2011

The dates and amounts of the Foundation's monetary gifts to the President's Gift Fund for the President's office for 2007 to 2011 are set forth in the following table.

Date of Letter	Account	Amount
1/10/07	President	\$10,000
9/25/07	President	\$10,000
2007 Total Cash Gifts		\$20,000
3/18/08	President	\$10,000
7/23/08	President	\$10,000
12/11/08	President	\$4,000
2008 Total Cash Gifts		\$24,000
1/12/09	President	\$6,000
7/15/09	President	\$10,000
2009 Total Cash Gifts		\$16,000
1/12/10	President	\$10,000
7/8/10	President	\$7,000
2010 Total Cash Gifts		\$17,000
1/12/11	President	\$10,000
1/20/11	President	\$4,000
10/4/11 ⁵⁰	President	\$10,000
10/4/11	President	\$6,000
2011 Total Cash Gifts		\$30,000

⁵⁰ The two identical gift offer letters of this date raise aggregation issues.

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Appendix C - Gift Excerpt from NAVINSGEN 200900253

Allegation #2: That on more than one occasion, VADM Quast improperly accepted gifts on behalf of the Navy from the NPS Foundation, in violation of 10 USC § 2601, SECNAVINST 4001.2J, and NAVPGSCOLINST 4001.1D.

Background

115. During the course of the investigation, an emergent allegation was raised concerning VADM Quast's solicitation and acceptance of gifts to the Navy from the NPS Foundation as reimbursement for personal expenses. Witnesses testified that alcoholic and non-alcoholic beverages were purchased by VADM Quast and other CEE or ELO employees for ELO course receptions. Witnesses further stated that following the receptions, the NPS Foundation reimbursed the purchaser in the form of a check made payable to the purchaser (VADM Quast).

NPS Foundation

116. The NPS Foundation is a non-Federal entity whose purpose is to provide support to the NPS. The NPS Foundation is also a 501(c)(3) charity whose mission is to enhance programs and facilities at NPS through private donations from individuals and corporations. The bylaws of the NPS Foundation provide for the provision of gifts to the NPS in part:

General: The gift should be acceptable to the Secretary of the Navy. It is the Secretary's policy to refuse any gift which at some future time might embarrass the Department of the Navy by reason of favors expected as a result of the gift or which might result in unwarranted publicity for the donor at the expense of the Department.

117. The NPS Foundation receives contributions from a variety of sources. One of the NPS Foundation's contributors is GDIT. In a 21 May 2009 e-mail to this office, FOIA b6 & b7c
FOIA b6 & b7c NPS Foundation FOIA b6 & b7c, shared the following:

GDIT is one of our active corporate donors who contribute annually to our America's Heroes golf fundraiser. Last year, GDIT made a donation to the NPS Foundation's Winter Ball fundraiser as well.

Throughout the year, GDIT makes smaller monetary donations to the NPS Foundation, and from these donations, the NPS

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Foundation makes small grants in support of educational programs at the NPS Executive Learning Center [Office], Center for Executive Education, and the Office of Continuous Learning.

Findings of Fact

118. NPS Instruction (NAVPGSCOLINST) 4001.1D, "Policies and Procedures for Gift Administration, Gift Acceptance and Event Sponsorship for the Naval Postgraduate School," of 17 November 2004, provides that gifts from the NPS Foundation are accepted by the NPS President on behalf of the DON. VADM Quast is not a gift acceptance authority, under this or any other instruction.

119. Witnesses testified that prior to a reception, VADM Quast, an ELO, or CEE employee (Government or contractor) purchased alcoholic and non-alcoholic beverages with personal funds. Following the reception, a letter was prepared on Executive Learning Officer letterhead, addressed to the NPS Foundation, requesting reimbursement for the personal expenses of beverages. The body of the letter requested reimbursement made payable in the form of a check for a specified amount, with receipt attached.

120. A review of the NPS Foundation income and expense report from January-December 2008 showed NPS Foundation checks were made payable to various ELO and CEE employees, such as VADM Quast (ELO), FOIA b6 & b7c (ELO), FOIA b6 & b7c (GDIT contractor), FOIA b6 & b7c (CEE), FOIA b6 & b7c (CEE), and FOIA b6 & b7c (CEE). NPS Foundation check memo notes varied, but generally indicated that reimbursements were for ELO course receptions. Some of the memo notes stated for example, "ELO," "reception SCW Feb. 26-28, 2008" or "refreshments reimburse."

Witness Testimony

FOIA b6 & b7c

and

FOIA b6 & b7c

121. FOIA b6 & b7c, FOIA b6 & b7c of the CEE, and FOIA b6 & b7c Business Administrator, affirmed that reimbursements were made for personal expenses from the NPS Foundation. FOIA b6 & b7c and FOIA b6 & b7c stated that the individuals who purchased alcoholic and non-alcoholic beverages for ELO receptions, including VADM Quast, received reimbursement from the NPS Foundation. They were unable to provide additional details regarding the reimbursements.

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FOIA b6 & b7c

122. FOIA b6 & b7c is the NPS FOIA b6 & b7c . FOIA b6 & b7c stated that he has concerns about NPS employees being reimbursed directly from the NPS Foundation for expenses incurred in connection with their duties. He said he has discussed his concerns with FOIA b6 & b7c , FOIA b6 & b7c of the CEE, FOIA b6 & b7c , NPS FOIA b6 & b7c, and FOIA b6 & b7c , NPS FOIA b6 & b7c . FOIA b6 & b7c stated:

... I've had extensive conversations with our lawyers here at NPS ... in regards to NPS and foundation relationships as far as how those contributions or how fees may have flowed through the foundation and then potential conflict of interest issues, or just what I consider to be probably questionable business practices as it evolves - involves using the foundation in that way, to do things - in other words to do things that we, the government can't do.

And it's kind of what they would -- I would call a "work around" methodology ... subsets of our organization who have been involved with the foundation for conferences and/or training evolutions that involved running money in and around and through the foundation ... I don't know the level of involvement that ELO and CEE have had with the foundation here ... how do I say this nicely? I've been concerned about the business practices of that organization for a - for quite a number of years now.

...

... if it involves official Navy functions or official Navy involvement and there is an absolute process that we follow to accept gifts from the foundation.... ... they [NPS Foundation] would issue a check and a letter to the President of NPS. NPS [President] would accept on behalf of NPS and then forward it to the Secretary of the Navy's Office for final acceptance. They [Secretary of the Navy's Office] in turn, accept the money and the gift itself and then place the funds into an actual appropriation that I have been issued by the Secretary of the Navy for a non-appropriated gift fund -- appropriation. I mean it's an actual appropriation. I don't see cash. They [Secretary of the Navy's Office] take the cash and they put it - deposit it into the treasury and give it to me in the form of an appropriation. That is the actual process that we use to accept the gift ... But to say that the foundation may

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have given a member of NPS money directly I would question that practice.

123. FOIA b6 & b7c stated that no one can accept a gift on behalf of NPS other than the President of NPS. VADM Quast "... is a[n] NPS employee and the ELO program is a program of NPS/ as the executive agent of the program."

FOIA b6 & b7c

and

FOIA b6 & b7c

124. FOIA b6 & b7c, USN, is the NPS FOIA b6 & b7c and Mr. FOIA b6 & b7c, the NPS FOIA b6 & b7c, assigned from the FOIA b6 & b7c and FOIA b6 & b7c

provided their legal perspective of the NPS gift acceptance policy. They affirmed that the NAVPGSCOLINST is the only policy in affect at NPS that governs gift acceptance. This policy applies to any person or NPS activity that reports to the NPS President. The policy and instruction place the acceptance of gift authority solely in the NPS President's hands, and they are not aware of any delegation of this authority.

125. FOIA b6 & b7c and FOIA b6 & b7c have answered routine questions from students and staff regarding NPS Foundation gifts, but they have not responded to specific questions about the appropriateness of ELO or CEE personnel receiving personal checks for reimbursement from the NPS Foundation. They stated that all NPS employees have been informed of gift acceptance procedures and policy in accordance with the Joint Ethics Regulation and the internal NAVPGSCOLINST.

VADM Philip Quast

126. VADM Quast stated that NPS Foundation's involvement with ELO courses (contributing to receptions and other events) began years ago. He said back then, a few retired flag officers, who attended an Executive Business Course when they were on active duty, came to him with the idea that they wanted to do something to support ELO, because they liked what he was doing for the Navy. VADM Quast recalled telling the retired officers to talk to the NPS Foundation for ways to contribute and support ELO, because "I'm knowledgeable enough to know that we can't take any funds or any support from the private sector."

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127. VADM Quast stated:

I went over and talked to... at that time the president of the Foundation, FOIA b6 & b7c ,⁵¹ and I said, 'Here's what I'm hearing. People are coming to us and saying, Hey we understand in the executive world of education and development that networking and mentoring and all this stuff, this is part of it and it helps when you've got that kind of informal atmosphere, social atmosphere where you can do a lot of networking.'

So we'd been doing it initially, right at the Postgraduate School in my office place and having wine where we collected a dollar a glass or some such thing. It was kind of juvenile, very amateur. And so I said, 'These folks want to support it but I can't be in the position of taking money or anything from them.' That's how this all turned out. I mean, that's how it all came about. The Foundation is under the President of the Postgraduate School who has got an [SJA] and a lawyer.

I never went any further. We set up a procedure whereby people could donate money if they wanted to and I would go to the Foundation and ask for entertainment funds. That's how this whole thing developed. I don't think there was anything ever written down that I know of, and I certainly didn't go beyond talking to the President of the Foundation.

...

When the [Foundation] President wasn't coming in to provide the wine, then my guys [ELO or CEE employees] were going to go out and start buying it on the market, and I didn't like that idea at all. So I don't know, for one thing I said, 'Hey, I'll go over to the exchange and buy it. I can get it cheaper than what you guys can get it, so let's not go out into the marketplace.'

128. VADM Quast stated that if there are regulations governing gifts from the NPS Foundation, he is not aware of them. Regarding knowledge of the regulations, he said "I'm not aware of them and I didn't -- if there are, then in my opinion that's the Foundation's responsibility. I set up the alignment with the Foundation the way they wanted it."

⁵¹ FOIA b6 & b7c USN (Ret) was the Executive Director of the NPS Foundation from FOIA b6 & b7c. He was not the NPS Foundation President. certainly didn't go beyond talking to the President of the Foundation.

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129. VADM Quast said he thought he initiated the process with the NPS Foundation whereby, expenses were personally incurred (by either him, a member of CEE, or ELO) before the reception for alcoholic and non-alcoholic beverages. Following the reception, ELO would prepare a letter to the NPS Foundation requesting reimbursement for the personal expenses citing the amount of reimbursement, the name of who the NPS Foundation needed to write a check payable to, and a copy of the receipt. He stated:

It got down to the point where, well, initially it was just for on-campus at Monterey, the Postgraduate School.... And then when we went off the campus I went to them [Foundation] and I said, 'Hey, would you still be willing to cover the entertainment that was not at the Postgraduate School,' and they [Foundation] indicated they would. They'd cover up to, I forget what the amount was but it wasn't a whole lot of money. It was just so that we could have the reception, cover some of the wine.

So out of that we basically give them a receipt and then we get reimbursed for the amount of money that we spent. Like at North Carolina, for example.

...

At North Carolina... we open up the bar for a period of time and say we'll cover it up to \$200 or something, \$150. And then they give me a bill. I pay for it and then I submit it to the Foundation.

Q: You pay for it personally?

A: On my personal card, yeah.

Q: And so then the Foundation is reimbursing you?

A: Yeah.

130. When asked if gifts from the NPS Foundation should be presented to the NPS President, VADM Quast stated, "I wouldn't know about that."

131. When asked if he's ever consulted with legal about his receipt of gifts from the NPS Foundation, VADM Quast stated:

I talked to the President of the Foundation when we set this thing up. The situation that you have highlighted is the procedure that we set up. And he was, as I say, the Foundation belonged to the school so the assumption

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is that he was doing everything according to whatever guidance that was out there.

132. VADM Quast stated that although ELO's reimbursement letters to the NPS Foundation requested reimbursement from an "ELO Foundation account," he is not aware of any specific ELO account being managed by the NPS Foundation.

133. VADM Quast stated that no former NPS President and "certainly not this president," ever delegated authority to him to accept gifts on their behalf from the NPS Foundation.

Applicable Standards

134. Title 10 USC§ 2601, "General gift funds," provides:

(a) General Authority to Accept Gifts. Subject to subsection (d)(2), the Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary.

(c) Gift Funds. Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) ... shall be deposited in the Treasury in the following accounts:

(2) The Department of the Navy General Gift Fund, in the case of deposits made by the Secretary of the Navy.

(d) Use of Gifts; Prohibitions.

(1) Except as provided in paragraph (2), property and money accepted under subsection (a) ... may be used by the Secretary concerned....

(2) Property and money may not be accepted under subsection (a) ...

(C) if the Secretary concerned determines that the use of the property or money or the performance of the services would reflect unfavorably on the ability of the Department of Defense or the Coast Guard, any employee of the Department or Coast Guard, or any member of the armed forces to carry out any responsibility or duty in a fair and objective manner; or

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(D) if the Secretary concerned determines that the use of the property or money or the performance of the services would compromise the integrity, or the appearance of integrity of any program of the Department of Defense or Coast Guard, or any individual involved in such a program.

135. SECNAV Instruction (SECNAVINST) 4001.2H of 14 March 2006, "Acceptance of Gifts," provides:

...

4. Definitions

a. "Acceptance authority," is the official or officer in the DON who, on behalf of the of the Navy, may accept gifts satisfying acceptance criteria found in paragraph 6 of this instruction. Acceptance authorities for particular categories of gifts are listed in paragraph 5.

...

c. "Money" means cash, checks, or other forms of negotiable instruments.

5. Acceptance Authority. Authority to offered to the DON rests with the Secretary of the Navy and designees assigned herein. The Secretary of the Navy may approve additional delegations. Authority to accept a gift offer depends upon the value and kind of property offered. There are several levels of authority as outlined below.

...

c. The CNO, VCNO, DNS, CMC, ACMC, DMCS, AAUSN, and CNR may delegate their authority to accept sofa value of \$12,000 or less.

6. Acceptance Criteria

...

b. Solicitation of Gifts. Unless authorized by the Secretary of the Navy, DON personnel shall not initiate requests for gifts or contributions for DON institutions or organizations. The DON shall not accept gifts initiated contrary to this policy.

...

g. Gifts from Foundations and Similar Entities. While foundations and other non-profit organizations may

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provide valuable support to the DON, they should not be used as conduits to make indirect gifts that DON gift acceptance policies would not permit if offered directly to the DON.

...

7. Processing Gifts

a. Donors should make checks payable to the "Department of the Navy."

b. The AAUSN is responsible for processing gifts requiring acceptance by the Secretary or Under Secretary of the Navy. Activities receiving offers requiring Secretary or Under Secretary of the Navy or AAUSN acceptance must promptly notify AAUSN upon receipt of such offers.

...

e. Whenever possible, the DON officials should not custody of a gift before official acceptance. If the DON assumes custody of the gift, the benefiting activity shall advise the donor in writing that acceptance of the money, property or endorsement of negotiable instruments does not constitute official acceptance of the gift.... Activities shall not deposit money into the applicable trust fund prior to official acceptance.

...

g. Prospective donors should be advised to submit the offers in writing explicitly specifying any conditions associated with gift acceptance. Upon receipt, activities must promptly forward offers through the chain of command via the appropriate acceptance authority's legal counsel or judge advocate.

...

k. The DON must deposit all gifts of money or securities accepted under Title 10, USC § 2601 into the Navy General Gift Fund (NGGF). No money should accompany the acceptance documentation through the chain of command and the DON cannot deposit money into the NGGF prior to official acceptance ...

(1) Activities will coordinate with Assistant for Administration to the Under Secretary of the Navy (AAUSN) to determine if local deposit of funds into the NGGF is optimal. If AAUSN determines that local deposit is not optimal, activities must forward checks directly

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to AAUSN through an expedited and guaranteed mailing process;

(2) Activities will fax or e-mail acceptance documentation to AAUSN;

(3) AAUSN will establish new gift allotment or project as required; and

(4) Activities may not execute funds until AAUSN verifies proper acceptance, verifies deposit into the NNGF, and issues a fund allotment (NAVCOMPT 372) to the intended receiving organization via e-mail.

136. NAVPGSCOLINST 4001.1D of 17 November 2004, "Policies and Procedures for Gift Administration/ Gift Acceptance and Event Sponsorship for the Naval Postgraduate School," provides:

...

3. Background. ... Reference (c) [OPNAVINST 4001.1D] provides additional guidance and delegates gift acceptance authority to the President of the Naval Postgraduate School, hereinafter referred as President, for gifts with a value of \$10,000 or less.

...

5. Solicitation Prohibited. NPS employees will not directly or indirectly solicit gifts for themselves, the Naval Postgraduate School, or for the Navy under any circumstances. Gifts offered as a result of solicitation will not be accepted. NPS employees must not refer a potential donor to any non-Federal entity.

6. Gifts from Foundation. Foundations and other non-profit organizations may provide valuable support to the DoN. However, such organizations should not be used as a conduit for individuals or other organizations to make gifts indirectly that would not be permitted under the DoN gift acceptance policies if they were offered directly to the DoN. To prevent appearances of impropriety, DoN personnel should not refer potential donors to foundations for the purpose of accomplishing gifts that would not be permitted by the DoN gift statutes....

7. Reimbursements. ... Should a non-Federal entity offer to support a school related function or event, then that offer must be processed in accordance with this instruction.

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...

10. Gift Processing Guidelines. Only the NPS President is authorized to accept gifts on the behalf of NPS/DoN. NPS employees will not accept or otherwise make official use of donated funds or equipment without prior approval of the President. Internal procedures for processing gift offers are as follows:

...

b. Gifts of Money Worth \$10,000 or Less. For gifts of money (cash, checks, or other negotiable instruments) worth \$10,000 or less, the Legal Office will endorse as well as prepare a forwarding letter to the Assistant for Administration, Under Secretary of the Navy (AAUSN) for the NPS President's signature... the President may accept the gift but the AAUSN's office must deposit the funds and distribute them back to the NPS.

(1) The gift offer from the non-Federal entity, the Legal Office forwarding letter, and a photocopy of the check will be routed... to the Flag Writer who will prepare a gift acceptance and thank you letter at the direction of the President...the original check will be locked in the Legal Office for safe keeping. Once accepted by the President, the Flag Writer will return the signed forwarding letter and acceptance/thank you letter to the Legal Office for mailing to the AAUSN and the donor. ...

(2) Both the Legal Office and the Executive Director of Institutional Advancement will maintain a file of all gift documentation. The Legal Office will provide a copy of the forwarding letter, a copy of the acceptance/thank you letter, and a copy of the check to the Comptroller's Office to enable the Comptroller to monitor the AAUSN's progress of depositing funds for use by the NPS. Copies of all documentation will also be sent to the originator and the Executive Director of Institutional Advancement.

12. Proper Procedure for Internal Distribution of Gifts. Once the allotment authorization (NAVCOMPT 372) is received from the AAUSN, the following procedures apply:

a. The Comptroller's office maintains responsibility for establishing the receiving account, or for applying the funding documents to previously existing accounts. The Comptroller's office will then inform the account manager of the gift status and procedures for approved account

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expenditures. The Executive Director of Institutional Advancement will work with the Comptroller to assign responsibility based on the donor's specifications.

Analysis

137. Although VADM Quast's personal acceptance of money from the NPS Foundation could be considered an improper gift to him under the Standards of Conduct,⁵² we considered his actions more as an effort to solicit money for the Department of Navy (NPS in particular) and his receipt of the money as an acceptance of gifts (although improper) on behalf of the Navy. In making the distinction, we considered the fact that VADM Quast was not personally enriched and demonstrated no intent to personally gain from his actions.

138. At NPS only the President has the authority to accept gifts from the NPS Foundation.⁵³ Proper procedures for receiving gifts from the NPS Foundation would involve the NPS President, Legal Office, and Comptroller and would be more time consuming and cumbersome than the informal procedures VADM Quast utilized.

139. VADM Quast acknowledged that on more than one occasion, he purchased alcoholic and non-alcoholic beverages for ELO receptions. He stated that following these receptions, he submitted a receipt along with a request for reimbursement to the NPS Foundation and subsequently received reimbursement in the form of a check made payable to him. We conclude that he was not authorized to accept gifts from the NPS Foundation on behalf of the Navy or NPS and therefore violated the applicable standards, and his solicitation for reimbursement for personally incurred expenses violated the regulatory prohibition against solicitation of gifts noted specifically in the above cited SECNAVINST and NAVPGSCOLINST. Furthermore, VADM Quast failed to observe any of the required regulations on reviewing, reporting, and accounting for monetary gifts to

⁵² 5 CFR 2635.202 provides that an employee is prohibited "from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions...."

⁵³ Although not cited, it is noted that OPNAVINST 4001.1E of 1 December 2006, "Acceptance of Gifts," does not delegate gift acceptance authority to the NPS President. Contact with VCNO legal noted that this was an oversight and, as a practical matter, verified that VADM Oliver (Ret), NPS President, is recognized as the gift acceptance authority for NPS.

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the Assistant Secretary of the Navy received from a non-Federal entity.⁵⁴

140. Therefore, we find that VADM Quast improperly solicits and accepts gifts on behalf of the Navy, in violation of 10 USC § 2601, SECNAVINST 4001.2J, and NAVPGSCOLINST 4001.1D.

Conclusion

141. This allegation is substantiated.

⁵⁴ We note that in addition to his improper solicitation and acceptance of gifts, VADM Quast's conduct in this matter created an unnecessary appearance of impropriety, as related to the exchange of money between GDIT, the NPS Foundation, and himself. In simplest terms, VADM Quast is responsible for awarding GDIT money through the contract; GDIT in turn executes his educational programs. GDIT then donates money to the NPS Foundation periodically throughout the year, and VADM Quast solicits money from the NPS Foundation in support of the receptions.

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