UNIVERSITY CORPORATION FOR ATMOSPHERIC RESEARCH

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February 11, 2015

Ms. Suzanne Plimpton
Reports Clearance Officer
National Science Foundation
4201 Wilson Blvd, Room 1265
Arlington, VA 22230
Subject: Management Fee Policy

Dear Ms. Plimpton:

UCAR appreciates the opportunity to submit comments with respect to the Proposed NSF Management Fee Policy.

UCAR has had responsibility for managing the National Center for Atmospheric Research under a cooperative agreement. NSF recognizes that a management fee is appropriate to recipients of Cooperative Agreements and agreed to continue its long-standing practice of awarding a management fee to UCAR under its most recent agreement. NSF's practice of paying a management fee is consistent with other agencies that have entered into contracts with and pay management fees to universities and other non-profits to manage their Federally Funded Research Development Centers (FFRDC). Managing an FFRDC requires a level of management, infrastructure and executive expertise that goes far beyond "financial assistance," and management fees contribute to the cost of managing the FFRDC on behalf of the federal government. It is in NSF's continued best interest to provide a financial reward sufficient to stimulate efficient performance and to retain the highest level of service to support its FFRDCs. The payment of management fees allow FFRDC managers to continue to maintain a healthy balance sheet and cover risks that arise from operating complex and robust centers.

1. *Justification, Award, and Use of Management Fee*

The draft policy recognizes that management fees are *in excess* of a cooperative agreement's *allowable costs*. This is consistent with federal regulations, as management fees are outside the scope of the cost principles set forth in the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards Guidance ("Uniform Guidance"), which replaced the OMB circulars. The Government Accounting Office (GAO) does not audit the *use* of fee awarded by the federal government. Fees are viewed by the government as discretionary funds, and once awarded, OMB treats those funds as belonging to the recipient. Therefore, awardees are not required to submit to an accounting for use of the fee.

NSF provides criteria that it will consider in the award of fee. NSF recognizes that fee should be allowed to cover "other expenses that are ordinary and necessary for business operations that may not be reimbursable under the governing cost principles." NSF then provides examples of expenses that do not benefit NSF. We maintain that the criteria for award and justification of fee should not include a list of exclusionary items, as this approach is inconsistent with the Uniform Guidance and similar uniform procurement guidance on the award of fee under the Federal Acquisition Regulations (FAR). For example, under FAR part 15.404, Contract Pricing, the "contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily." FAR part 15.404(c)(5).

An exclusionary list of items for which management fees may not be used is also inconsistent with cost and audit principles. Use of fee is appropriate when enabling the award recipient to recover costs that the government does not recognize as allowable. FAR part 15.404-4. To imply that fees must be "allowable" contradicts the current regulatory guidance.

In addition, NSF states that this exclusionary list of items that are deemed "not to benefit NSF" is not exhaustive. This puts awardees in the position of having to determine whether an expenditure would benefit the NSF or not and leaves them vulnerable to NSF questioning their determination with no recourse. So, instead of providing clarity and certainty, this creates uncertainty for awardees.

Fee proposals should rely on a positive justification and not require any reference to other sources of income. We recommend removal of any requirement by NSF of review of an awardee's "other sources of income" beyond what is already made available by nonprofit organizations through existing audits, provision of annual audited financial statements, annual audited reports under the Uniform Guidance (formerly A-133 Reports) and IRS Form 990 filings. In order to receive federal funding, nonprofit organizations are already subject to numerous audits and oversight by the federal government and outside auditors.

Further, examination of non-NSF sources of income by NSF would require nonprofit organizations to reveal confidential and proprietary information that may violate other sponsors' agreement terms. This proposed requirement is also inconsistent with NSF's own current guidance on the justification of fees, unsupported by any other procurement regulation on award of fees, and an unnecessary intrusion into proprietary financial business information.

Current federal record keeping requirements also support our view that requiring an awardee to allow NSF to examine other sources of income is inappropriate. The applicable federal regulations governing grants and cooperative agreements, including that codified as Uniform Guidance Title 2, Subtitle A, Chapter II, §200.333, only allow Federal awarding agencies access to records "pertinent to a Federal award." The provision further directs that "Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities."

Lastly, we recommend that NSF establish percentage guidelines for the amount of fee to provide certainty to the awardee and any competitors during an RFP process. Consistent with NSF's current guidance in its Proposal and Award Manual, NSF could provide an upward boundary of 15%. By way of comparison, the FAR provides [part 15.404-4(b)(4)(i)(A)]: "For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee."

2. *Scrutiny of Awarded Management Fee*

NSF recognizes that management fees are not auditable but states that NSF has a general interest in how fee is used. We do not object to a broad criteria that requires, as part of a periodic management report, examples of fee use consistent with, or in addition to, the original fee justification award. However, we are concerned about the review or audit of the use of management fee. As stated above and reflected in the Uniform Guidance, once awarded the fee becomes the recipients, and as such, are not auditable. Under the procurement regulations (FARs), other government contractors are not subject to audit of their *use* of fee. To create a new framework where fee paid to cooperative agreement awardees are treated differently from a fungibility and audit perspective than fee paid to other government contractors under a contract, severely disadvantages awardees. Such a policy will also make it more difficult for nonprofits to obtain fee in non-government funding situations.

3. *Acceptable Use of Management Fee*

The examples of acceptable use contained in the draft policy are very restrictive and will hamper the awardees' ability to make decisions that ultimately benefit the NSF. The draft policy suggests that NSF wants to limit the use of fee to only those costs that fall outside of 2 CFR Part 200. Many awardees have used management fee to make investments in new programs, initiatives and strategic hiring; this use of fee would not be allowed under the proposed limitation. It would also limit awardees' ability to use the fee to make investments in new business technologies that would be of benefit to NSF in terms of administrative efficiency and reporting.

The draft criteria addresses amounts for working capital but does not address the cost of money. The ability to use management fee to help support cash flow needs is critical to awardees. Awardees are not allowed to charge the federal government interest and awardees are reimbursed for costs only after the costs have been incurred, leaving a gap in funding. These cash flow issues require many awardees to support the cash needs of the organization to provide financial stability.

Thank you for allowing us to submit our input.

Sincerely,

Thomas J. Bogdan

Thomas J. Bogdan
UCAR President