

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI

File Number: I93020007

Date: 11 March 2002

Subject: Closeout Memo

Page 1 of 1

There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject¹ was alleged to have violated NSF's Conflict of Interest policy. The Office of General Counsel determined that the subject has a permanent post-employment restriction with regard to a particular grant² at the subject's institution³.

Accordingly this case is closed.

[REDACTED]

Name:	Prepared by:	Cleared by:		
	Agent:	Attorney:	Supervisor:	AIGI
Signature & date:				



DATE	SIGNATURE	DIV'N
3/14	[REDACTED]	100
3/14/91	[REDACTED]	46

Possible Conflict of Interest Involving Dr. [REDACTED]

Introduction

Dr. [REDACTED] was employed as the Co-Program Director of NSF's [REDACTED] [REDACTED] program from September [REDACTED] through August [REDACTED] 1990. On September [REDACTED], Dr. [REDACTED] began her employment as Acting Principal Investigator (PI) on the [REDACTED] University [REDACTED] award. Based upon this, NSF's Office of Inspector General (OIG) reviewed the conflicts advice Dr. [REDACTED] received from NSF with regards to post-employment restrictions. We found no evidence that Dr. [REDACTED] violated any post-employment restrictions, although we questioned the conflicts advice she received from NSF.

Basis for Investigation

During her tenure at NSF, Dr. [REDACTED] and the other [REDACTED] Co-Program Director, Dr. [REDACTED], oversaw the inception of the implementation awards under the [REDACTED] program and in November 19 [REDACTED], recommended that [REDACTED] cooperative agreements be awarded to [REDACTED] and five other universities. In the spring of 19 [REDACTED], Dr. [REDACTED] began negotiating with [REDACTED] University officials for the position of Principal Investigator (PI) on the [REDACTED] award. Those negotiations culminated on July [REDACTED], when [REDACTED] formally offered Dr. [REDACTED] the PI position and she accepted. On August

19[REDACTED], Dr. [REDACTED] resigned from her NSF position to begin work as Acting PI on the [REDACTED] award.

Under the Inspector General Act of 1978, as amended, we began an investigation to determine whether there had been any violations of 18 U.S.C. Section 208: acts affecting a personal financial interest, Section 207: restrictions on former employees of the executive and legislative branches; or NSF conflict of interest regulations as set out in Manual 15.

Method of Investigation

We interviewed Dr. [REDACTED] Dr. [REDACTED], [REDACTED] Division and Deputy Division Directors, NSF's Acting Designated Agency Ethics Official (DAEO), the Office of General Counsel (OGC) attorney who conducted Dr. [REDACTED] exit interview, and the former PI on the [REDACTED] award. We also reviewed Dr. [REDACTED] official NSF personnel file and division conflicts file, and the [REDACTED] award files.

Background

NSF's [REDACTED] program was initiated in 19[REDACTED] to increase participation by minorities in science and engineering fields. [REDACTED] is administered through the Division of [REDACTED] [REDACTED] in the Directorate [REDACTED]. Dr. [REDACTED] was hired in September 19[REDACTED] to manage and direct the [REDACTED] program and to

oversee the initial [REDACTED] awards. Dr. [REDACTED] was hired in early January 19[REDACTED] as Co-Program Director of [REDACTED]. Drs. [REDACTED] and [REDACTED] shared responsibility for [REDACTED] management and direction.

In late January 19[REDACTED], [REDACTED] implementation proposals from universities nationwide were submitted to NSF. Dr. [REDACTED] recused himself in writing from any dealings with the [REDACTED] proposal submitted by [REDACTED] University / [REDACTED] because he was the PI on the [REDACTED] University / [REDACTED] planning grant prior to his NSF employment. Dr. [REDACTED] told us that she followed Dr. [REDACTED]'s lead, and recused herself from handling any proposals submitted by [REDACTED] universities, since she believed she would return to [REDACTED] in the future and wanted to avoid any possible conflicts of interest with [REDACTED] universities. Dr. [REDACTED], however, did not recuse herself in writing from involvement with [REDACTED] universities, as Dr. [REDACTED] had, and Dr. [REDACTED] does not recall Dr. [REDACTED] ever mentioning any such informal recusal.

Dr. [REDACTED] and Dr. [REDACTED] divided up the [REDACTED] proposals for review, with Dr. [REDACTED] handling the three proposals submitted by [REDACTED] universities, including the [REDACTED] proposal, and Dr. [REDACTED] handling the review of the [REDACTED] University / [REDACTED] proposal. After a mail and panel review of the [REDACTED] proposals, Drs. [REDACTED] and [REDACTED] discussed which universities to select to present their proposal at the NSF Reverse Site Visit in June of 19[REDACTED]. Dr. [REDACTED] did not discuss the [REDACTED] University / [REDACTED] proposal. Although the [REDACTED] [REDACTED] proposal was not discussed substantively, because of its

high rating, another [REDACTED] proposal was discussed by both Dr. [REDACTED] and Dr. [REDACTED]. Drs. [REDACTED] and [REDACTED] selected [REDACTED] University as one of 15 universities to participate in the Reverse Site Visits.

During the Reverse Site Visits, Drs. [REDACTED] and [REDACTED] led the discussions for the proposals that they had reviewed initially. Dr. [REDACTED] left the room during the Reverse Site Visit presentation by [REDACTED] University / [REDACTED] however, Dr. [REDACTED] was present during the Reverse Site Visit presentation by [REDACTED].

Prior to the Reverse Site Visits, each of the 15 universities was sent a list of issues that it had to respond to during its presentation, and each university response was included in the proposal jackets. After the Reverse Site Visits were conducted, Drs. [REDACTED] and [REDACTED] reviewed the university responses and discussed which universities to recommend for [REDACTED] funding. Dr. [REDACTED] never saw the [REDACTED] University / [REDACTED] proposal or response, and he did not discuss with Dr. [REDACTED] whether that proposal should be funded. Dr. [REDACTED] told us that she did not discuss the [REDACTED] proposal with Dr. [REDACTED], but Dr. [REDACTED] recollection is that they discussed all of the proposals (except for the [REDACTED] one). In making this decision, Drs. [REDACTED] and [REDACTED] were not limited to recommending six [REDACTED] proposals for award; in fact, they expected to recommend as many as ten proposals. Drs. [REDACTED] and [REDACTED] selected [REDACTED] and five other universities to receive [REDACTED] funding.

Dr. [REDACTED] and Dr. [REDACTED] each maintained their previously held responsibility for three of the six universities awarded funding. This responsibility now included handling all pre-award budget negotiations with the universities prior to the awards being made in November 19[REDACTED], and all post-award adjustments and reviews. Dr. [REDACTED] maintained responsibility for the [REDACTED] University / [REDACTED] award and two other awards, and Dr. [REDACTED] maintained responsibility for the [REDACTED] award, and two other awards.

Although Dr. [REDACTED] maintained responsibility for the [REDACTED] award, during the spring and summer of 19[REDACTED], and the summer of 19[REDACTED], some documents relating to the [REDACTED] IP were addressed by [REDACTED] to Dr. [REDACTED] and later included in the award jacket.

In November 19[REDACTED], the six universities were awarded [REDACTED] funding through cooperative agreements with NSF. In early 19[REDACTED] NSF received new proposals in response to the second solicitation for [REDACTED] awards. Dr. [REDACTED] reviewed at least two proposals from [REDACTED] universities (neither of which was submitted by [REDACTED]).

On March 30, 19[REDACTED] Drs. [REDACTED] and [REDACTED] signed a recommendation for supplemental funding for the [REDACTED] and the [REDACTED] University [REDACTED]. The supplemental funding was awarded for the specific purpose of establishing an [REDACTED] newsletter, to be produced by the [REDACTED] and [REDACTED] programs. In addition, both Dr. [REDACTED] and Dr. [REDACTED] presided over the [REDACTED] Panel Meeting on April [REDACTED], 19[REDACTED], where future [REDACTED]

awards were discussed in the presence of at least one [REDACTED] official. Drs. [REDACTED] and [REDACTED] also presided over the [REDACTED] Evaluation Meeting on April [REDACTED] 19[REDACTED] where the review and rating procedures of the six initial [REDACTED] awards were discussed with the PIs on the awards, including the PI on the [REDACTED] award.

On or after April [REDACTED] 19[REDACTED] the PI on the [REDACTED] [REDACTED] award spoke with Dr. [REDACTED] about taking over his position as PI when her NSF appointment ended in September of 19[REDACTED]. The PI of the [REDACTED] [REDACTED] stated that he approached Dr. [REDACTED] on a break during the April [REDACTED] 19[REDACTED] [REDACTED] Evaluation Meeting to discuss the PI position. In contrast, Dr. [REDACTED] stated that the PI contacted her over the telephone sometime in May 19[REDACTED] to discuss the position. Once the job negotiations began, Dr. [REDACTED] did not recuse herself from any official dealings with [REDACTED] University.

On June [REDACTED], and July [REDACTED], 19[REDACTED] Dr. [REDACTED] met and received advice from NSF's Acting DAEO on: 1) accepting the position at [REDACTED] University, 2) conducting two [REDACTED] site visits after departing from NSF in September of 19[REDACTED] and 3) attending the [REDACTED] Project Directors' Meeting in September 19[REDACTED]. During the meetings, the DAEO asked Dr. [REDACTED] about her level of involvement with the [REDACTED] [REDACTED] award, and she stated that she had not been involved with that award. The Acting DAEO stated that he provided general advice to Dr. [REDACTED] explaining the conflicts rules to her and advising her about specific dealings with NSF after her departure. The Acting DAEO did not believe that he provided any specific advice to Dr. [REDACTED] because if he had, he would have provided that advice in writing, and he

had no records of any written advice to her. In contrast, Dr. [REDACTED] believes that the Acting DAEO did provide specific advice to her, stating that the one-year post-employment restriction applied to her when departing from NSF. In accordance with her understanding that the one-year restriction applied to her, Dr. [REDACTED] agreed not to represent the [REDACTED] award or other matters before NSF or other federal officials until November 19[REDACTED]

The Acting DAEO approved Dr. [REDACTED] service as an NSF consultant on the following three occasions after her departure, as indicated in a July [REDACTED] 19[REDACTED] memo from Dr. [REDACTED] to [REDACTED]'s Deputy Division Director*:

- The site visit of the [REDACTED] [REDACTED] on September [REDACTED] 19[REDACTED]
- The site visit of the [REDACTED] University / [REDACTED] [REDACTED] of September [REDACTED] 19[REDACTED]
- The Project Directors' Meeting from September [REDACTED], 19[REDACTED] through September [REDACTED], 19[REDACTED]

*In this memo, Dr. [REDACTED] states that she has explored with the DAEO the issue of conducting two [REDACTED] site visits in September 19[REDACTED] after her departure from NSF, and that he saw no problem with it as long as she followed one of three approaches: 1) continue her employment with NSF until the end of September with many days of leave of absence, 2) depart NSF at the end of August 19[REDACTED] and return as a consultant in September 19[REDACTED] or 3) depart NSF at the end of August 19[REDACTED] and develop a contract with NSF for her services in September 19[REDACTED]. Dr. [REDACTED] followed the second approach. Dr. [REDACTED] also stated in this memo that she discussed with the DAEO the issue of attending the September 19[REDACTED] Project Directors' meeting and he suggested that she return to NSF as a consultant for this meeting rather than as an [REDACTED] Program Director. Dr. [REDACTED] followed this advice, and served as a consultant to NSF during the meeting.

In a letter dated July 10, 19[REDACTED], [REDACTED] University officially offered Dr. [REDACTED] the PI position and she accepted. On August 6, 19[REDACTED] an attorney from NSF's OGC conducted an exit interview with Dr. [REDACTED]. According to Dr. [REDACTED] the exit interview was a short meeting where the OGC attorney questioned her about: 1) her understanding of the NSF post-employment restrictions, and 2) whether she was involved in any NSF procurement activities. Dr. [REDACTED] told the OGC attorney that she understood the different NSF post-employment restrictions, and that she had not been involved in any procurement activities during her tenure at NSF. Dr. [REDACTED] also told the OGC attorney that she had met with the Acting DAEO prior to the exit interview to discuss NSF post-employment restrictions. The OGC attorney who conducted the exit interview had no specific recollections of his meeting with Dr. [REDACTED]. OGC does not routinely keep notes of exit interviews with departing employees, and therefore, had no notes of the exit interview with Dr. [REDACTED]. However, the OGC attorney stated that NSF post-employment restrictions are reviewed in detail during all exit interviews. In addition, any questions posed by departing employees are answered, and specific advice regarding conflict of interest matters is often provided.

Dr. [REDACTED] resigned from her position at NSF on August [REDACTED], 19[REDACTED] and began her employment as Acting PI on the [REDACTED] [REDACTED] on September [REDACTED], 19[REDACTED] although she was not officially appointed to the position of Acting PI until May [REDACTED], 19[REDACTED] 3. Dr. [REDACTED] has not represented the [REDACTED] [REDACTED] award before NSF or federal officials since her departure. [REDACTED] University officially appointed the former PI on the [REDACTED] [REDACTED] as Substitute Negotiator for the award.

Findings Concerning Dr. [REDACTED]

We found no evidence of any violations of 18 U.S.C. Section 208 or related NSF conflict of interest regulations regarding acts affecting a financial interest as found in § 683.20 of NSF Manual 15. After April [REDACTED] 19[REDACTED] the earliest likely date of job negotiations between Dr. [REDACTED] and [REDACTED] University,* we found no evidence that Dr. [REDACTED] was dealing with the [REDACTED] award in her official NSF capacity as [REDACTED] Co-Program Director, or that she took any actions in favor of the [REDACTED] award at, or after, that time. We also found no violations of 18 U.S.C. Section 207 or related NSF conflict of interest regulations regarding post-employment restrictions as set out at § 682.10 and § 682.20 of NSF Manual 15.

However, we believe that the following actions by Dr. [REDACTED] raise a substantial question whether she participated personally and substantially in the [REDACTED] award:

- Dr. [REDACTED] was involved in the implementation awards of the [REDACTED] Program from their inception and was one of the authors of [REDACTED] evaluation procedures.
- Dr. [REDACTED] participated in discussions about which universities to invite to the [REDACTED] Reverse Site Visits in June 1[REDACTED]. [REDACTED] was one of 15 universities selected to participate.

*We were unable to determine the exact date Dr. [REDACTED] began negotiating with [REDACTED] University for the PI position because of a discrepancy about where and when the actual negotiations started.

- Dr. [REDACTED] participated in the Reverse Site Visit of the [REDACTED] proposal, and afterwards, in discussions of that proposal along with the five other proposals recommended for funding. Dr. [REDACTED] reviewed materials submitted by the universities, and jointly recommended the first six [REDACTED] awards with Dr. [REDACTED]
- Dr. [REDACTED] received documents during the spring and summer of 19[REDACTED] and the summer of 19[REDACTED] relating to the [REDACTED]
- On March [REDACTED], 19[REDACTED] Dr. [REDACTED] signed the recommendation for supplemental funding for the [REDACTED] and [REDACTED] awards.
- From April [REDACTED], 19[REDACTED], Dr. [REDACTED] presided over the [REDACTED] Panel Meeting where at least one [REDACTED] official was present.
- On April [REDACTED], 19[REDACTED] Dr. [REDACTED] presided over the [REDACTED] Evaluation Meeting, where discussions of [REDACTED] evaluation procedures were held with the PIs on the six initial [REDACTED] awards including the PI on the [REDACTED] award.

On the basis of these facts, and absent contrary information from Dr. [REDACTED] NSF's Acting DAEO concluded that Dr. [REDACTED] personally and substantially participated in the [REDACTED] [REDACTED] award matter while employed by NSF. He so advised Dr. [REDACTED] over the

telephone on August [REDACTED] 19[REDACTED]. He followed up on this advice in a letter to Dr. [REDACTED] dated September [REDACTED] 19[REDACTED].

Systemic Recommendation

In this case, the Acting DAEO inquired about Dr. [REDACTED]'s level of involvement with the [REDACTED] award, which was her intended future employer, and she said that she had had none. When provided with the information gleaned from our review of the program files, however, the DAEO concluded that while employed by NSF, Dr. [REDACTED] personally and substantially participated in the [REDACTED] award, which is her current employer.

Avoiding conflicts of interests is the personal responsibility of individual current and former NSF employees. We believe this case developed as it did because Dr. [REDACTED] relied on her recollection of her actions regarding the [REDACTED] award. *We recommend that, in circumstances where an NSF employee is leaving NSF to work on an NSF-funded project, OGC ethics counsellors suggest to the employee that the employee review the NSF program jacket for that project for any indications of involvement by that employee — particularly the presence of that employee's name and/or signature on documents in the jacket — and then discuss with the ethics counsellor the significance of any such indications.* If Dr. [REDACTED] had conducted such a review of the [REDACTED] jacket, we believe it likely that she would have found the documents with her name and signature that formed the basis for this investigation, and resolved the issues with the OGC ethics counsellor before she left NSF.