

NATIONAL SCIENCE FOUNDATION  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

## CLOSEOUT MEMORANDUM

Case Number: A09080070

Page 1 of 1

We received an allegation of plagiarism regarding one of Subject 1's proposals submitted to NSF from a company he founded with Subject 2. We found substantive plagiarism in that proposal, which was the basis for our recommendation for a finding of research misconduct. Additionally, that proposal was found to be duplicative of a proposal the company previously submitted to another federal agency and contains a misrepresentation of the company's facilities. In addition, we conclude the company inappropriately retained 47% of the awarded funds as profit through its misused NSF funds. Based on the totality of wrongdoing, we recommended debarring the subjects and their company. NSF concurred, made a finding of research misconduct against Subject 1 and debarred Subject 1, Subject 2, and their company for 3 years. This memorandum, NSF's adjudication, and OIG's report of investigation comprise the closeout. This case is **closed** with no further action taken.

# National Science Foundation Office of Inspector General



## Report of Investigation Case Number A09080070 March 27, 2013

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## Executive Summary

We are making recommendations under both the research misconduct regulations (Part I) and the non-procurement suspension and debarment regulations (Part II). Subject 1 and subject 2 co-founded a small business that submitted six proposals to the federal government between 2006 and 2009. The proposals the company submitted to NSF are at the center of the wrongdoing discussed in this memo. One proposal was found to have substantive plagiarism, which is the basis for our recommendation for a finding of research misconduct (part I). Additionally, that proposal was found to be duplicative of a proposal the company previously submitted to another federal agency and contains a misrepresentation of the company's facilities. In addition, we conclude the company misused NSF funds. Based on the totality of wrongdoing, we recommend debarring the subjects and their company (part II). The subjects did not provide a written response to our report, but subject 1 provided an oral response.

## Background

In 2004, while employed by a University (U1)<sup>1</sup>, subject 1<sup>2</sup> co-founded a company<sup>3</sup> with another scientist (subject 2).<sup>4</sup> Subject 1 was the PI of two SBIR proposals submitted to NSF by the company; both declined.<sup>5</sup> Subject 2, whom we later learned was married to subject 1, was the PI on three NSF proposals submitted by the company, one of which was awarded.<sup>6</sup> Subject 2 was listed as the company's Chief Technology Officer (CTO), the Authorized Organizational Representative (AOR), and President for all five of the NSF proposals submitted by the company. The company address is the subjects' home address.

## Part I: Research Misconduct

### A. OIG's Inquiry and Investigation

#### *Inquiry*

We reviewed an allegation that one of the subject 1's NSF proposals (the proposal)<sup>7</sup> contained plagiarized material. Our review identified approximately 154

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<sup>1</sup> The [REDACTED]

<sup>2</sup> Subject 1 is [REDACTED] also known as [REDACTED]. He was employed by U1 as a principle development engineer.

<sup>3</sup> [REDACTED]

<sup>4</sup> Subject 2 is [REDACTED] also known as [REDACTED].

<sup>5</sup> [REDACTED]

<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED] It was submitted by the company on [REDACTED] 2009. Tab 1. Subject 2 is listed as the AOR, President (p. 2) and, under the name [REDACTED], as a senior research scientist (p. 18 and p. 25).

lines of copied text and 1 copied figure from 8 source documents,<sup>8</sup> including 14 embedded citations. Subject 1 failed to reference six of the source documents, and although he referenced two others, it was not in conjunction with the copied text. None of the copied text was offset or distinguished in any way to enable a reader to differentiate subject 1's own text and citations from the allegedly plagiarized text and citations. In addition to the copied text, there was also one copied figure in the proposal, figure 3.<sup>9</sup>

We wrote to subject 1 regarding the copied text, to which he responded:<sup>10</sup>

I acknowledge that the citation and attribution to the use of some text in the documents should have been done more properly before the submission of the proposal.<sup>11</sup>

He claimed other language was so technically constrained that the text in the source documents was used to better describe the concepts and ideas. However, he did not provide the requested examples illustrating others' use of that same text. He also failed to explain why Figure 3 in the proposal appeared to have been copied without attribution. Further, subject 1 stated some of the proposal material was prepared by a former company employee,<sup>12</sup> but declined to provide identifying or contact information for this individual.

As a result of our Inquiry, we determined there was sufficient substance to proceed to an Investigation. Because subject 1 worked for a small business that lacks the resources to conduct an independent investigation, we conducted the Investigation.<sup>13</sup>

### *Investigation*

We wrote to subject 1 a second time seeking clarification and further explanation.<sup>14</sup> Subject 1 responded<sup>15</sup> that he did not want to involve any other individuals in the investigation and again declined to name the former employee who had contributed to the proposal. We note that even if the former employee had written parts of proposal, that employee's contribution was not acknowledged; thus, subject 1 would still have committed plagiarism because he submitted the work of another as his own without giving appropriate credit. In his response, Subject 1 again failed to provide any support for his claim that there were technical

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<sup>8</sup> The eight source documents (included in Tab 2) are seven publications (Source Documents A-G) and a Wikipedia article (Source Document H).

<sup>9</sup> See Figure 3 in the proposal compared to Figure 1 in the [REDACTED], *et al.* paper under Tab 2 (Source Document G (G4)).

<sup>10</sup> Tab 3 is our letter, and Tab 4 is subject 1's response.

<sup>11</sup> Tab 4, p. 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> 45 C.F.R. § 689.5(f).

<sup>14</sup> Tab 5.

<sup>15</sup> Tab 6.

constraints necessitating the use of certain language. Finally, with regard to Figure 3, subject 1 stated the figure in the proposal was not copied and provided three articles containing sample figures to show similarity.<sup>16</sup> The top half of Figure 3 in the proposal appears identical to the top half of the source figure. However, it appears subject 1 made slight modifications to his figure to obfuscate this; *i.e.*, he relabeled the variables and the shape of a small section of the curve in the bottom half. We concluded the figure in the proposal was based on and almost entirely copied by subject 1, with only minor differences, without acknowledgment of another author's figure.<sup>17</sup>

We conclude the references subject 1 included did not pertain to the sections of text he copied from the eight source documents. Instead, the subject simply included the citations already contained within the text he copied (embedded citations) and changed the reference numbers. Consequently, he failed to cite the actual sources of the copied text. We reviewed three other NSF proposals<sup>18</sup> submitted by subject 1 for evidence of a pattern of copying, but found no evidence of additional plagiarism.

## B. OIG's Assessment of RM

### The Act

Subject 1 copied approximately 154 lines of text, including 14 embedded citations, from 8 different source documents in his NSF proposal. The proposal also contained 1 figure substantially copied from another figure. Consequently, by failing to appropriately distinguish verbatim copied text and a figure from his own original text and figures, subject 1 presented the work of others as his own work and failed to give appropriate credit to the actual authors, which is plagiarism.

### Intent

By subject 1's own admission, he failed to appropriately cite the text originating in the source documents. Most of the source documents were not referenced by subject 1, and the two that were, were not near the plagiarized text. There were no quotations to distinguish the copied text from the subject's own text. In three separate instances, consecutive embedded citations in the proposal matched exactly with those of the source documents, further exhibiting subject 1's intent to use others' work as his own. We do not find it feasible subject 1 could have

<sup>16</sup> See Figure 3 in the proposal compared to the highlighted source figures in Tab 2 (Source Document B, (B3)) and Tab 6 (Source Documents I (I1), J (J1, J2), and K (K1)).

<sup>17</sup> See Figure 3 in the proposal compared to Figure 1 in Tab 2 (Source Document G (G4)).

<sup>18</sup>

and and

These proposals were declined.

copied this amount of unattributed text without knowing he was doing so. Moreover, the subject's figure was almost entirely based on and copied from the unacknowledged source figure; the fact that it was slightly altered by changing a variable name indicates culpable intent. We therefore conclude subject 1 acted knowingly when he copied text and the figure into his proposal.

#### Significant Departure

Based on the evidence and subject 1's responses, we conclude the preponderance of evidence indicates subject 1 knowingly copied 154 lines of unattributed text and one figure into his proposal without appropriately distinguishing this text from his own work. In doing so, the subject significantly departed from the accepted practice of his research community and NSF. A major scientific publisher in the subject's field is clear regarding plagiarism stating: "Plagiarism constitutes unethical scientific behavior and is never acceptable."<sup>19</sup> Accordingly, we conclude subject 1 plagiarized and, hence, committed research misconduct.

In deciding what actions are appropriate when making a finding of research misconduct, NSF must consider several factors. These factors include how serious the misconduct was; degree of intent; whether it was an isolated event or part of a pattern; its impact on the research record; and other relevant circumstances.<sup>20</sup>

#### Seriousness

As we noted above, we concluded the preponderance of evidence supports the conclusion that subject 1 acted knowingly when he plagiarized material into his proposal. Plagiarism violates research integrity and is a significant departure from accepted practices in the research community. We conclude the amount of plagiarized text is sufficiently serious to warrant a finding of research misconduct.

#### Pattern

As previously described, we examined three of subject 1's other NSF proposals and did not find evidence to establish a pattern of plagiarism.

#### Impact on the Research Record

The effect on the research record as a result of subject 1's actions was minimal as the plagiarized text was part of a confidential proposal that was declined funding.

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<sup>19</sup>See the American Institute of Physics' "Publication and authorship practices" (<http://www.aip.org/pubservs/ethics.html#authorship>), which apply to the Journal of Applied Physics. For example, the subject's article [REDACTED]

[REDACTED] was published in this journal;

<sup>20</sup> 45 C.F.R. §689.3(b).

### C. Subject's Response

The subject did not provide a written response to our draft report of investigation, but made oral statements. He confirmed receipt of the report, but said he is too sick to respond.<sup>21</sup> He did not address the substance of any of the evidence or attempt to provide any further explanations. He was concerned about the 3-year debarment, detailed in Part II of this report, because that will put the company out of business. He wanted to know when the debarment starts, and if it could be retroactive to 2009 or some earlier time. He doesn't know what he did wrong, he has never had a situation like this in his career, but doesn't have time to figure out the details; he understands we think he did something wrong. We did not change our draft report or recommendations.

### D. OIG's Recommendation for the Research Misconduct

Based on the evidence, OIG recommends NSF:

- Send subject 1 a letter of reprimand notifying him that NSF has made a finding of research misconduct.<sup>22, 23</sup>

For a period of 3 years immediately following the debarment period (see part II):

- Bar Subject 1 from participating as a peer reviewer, advisor, or consultant for NSF.<sup>24</sup>
- Require for each document (proposal, report, etc.), to which Subject 1 contributes for submission to NSF, that Subject 1 submit a contemporaneous certification to the AIGI certifying that the document does not contain plagiarism, falsification, or fabrication.<sup>25</sup>

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<sup>21</sup> [REDACTED], so his health is deteriorating.

<sup>22</sup> A Group I action 45 C.F.R. 689.3(a)(1)(i).

<sup>23</sup> We typically recommend the subject take an RCR course. In this case, after receiving an earlier draft of our report, subject 1 took an online RCR course and provided evidence he had done so. Accordingly, we removed that recommendation.

<sup>24</sup> A Group III action 45 C.F.R. 689.3(a)(3)(ii).

<sup>25</sup> This action is similar to 45 C.F.R. 689.3(a)(1)(iii).

## Part II -Other Acts

Generally, when we determine there is evidence of wrongdoing in an NSF award or proposal, we will look at other proposals submitted by the PI or small business. In this case, we reviewed all proposals the company submitted to NSF as well as financial documents related to its funded NSF award. Ultimately, we determined the company submitted a proposal to NSF that had previously been submitted to another federal agency and failed to disclose this fact; made numerous misstatements about its facilities in multiple proposals; and on its single, funded NSF award, made misstatements about where and who would perform NSF-funded activities. The company also made an excessive profit from the award that far exceeded what NSF allows.

### A. False certifications in the NSF Proposal

While conducting the review of plagiarism in the NSF proposal<sup>26</sup>, we determined that 5 months<sup>27</sup> prior to its submission to NSF; the company had submitted a similar proposal to the Department of Energy (DOE).<sup>28</sup> We concluded the proposals were duplicative and, consequently, we examined the certifications submitted with the NSF proposal. We discovered subject 2, as AOR and president, had falsely certified that the proposal had not been submitted elsewhere on both the proposal Cover Sheet<sup>29</sup> and the separate SBIR certification.<sup>30</sup> Additionally, the subjects failed to disclose the existence of the DOE submission on the Current and Pending Support (CAPS) page of the NSF proposal.<sup>31</sup>

### B. False Statements in NSF Award

We determined the company's awarded proposal (the award)<sup>32</sup> contained false statements concerning the facilities, the role of subject 2 (PI and AOR), and the role of subject 1.

<sup>26</sup> [REDACTED] (Tab 1).

<sup>27</sup> The DOE proposal was submitted on November 19, 2008, the NSF proposal on [REDACTED] 2009.

<sup>28</sup> [REDACTED] was submitted by the company on [REDACTED] 2008; DOE funded this research for \$99,617. Subject 2 was the PI. Tab 7; common text between the two proposals is highlighted in green.

<sup>29</sup> The NSF cover sheet contains the questions "IS THIS PROPOSAL BEING SUBMITTED TO ANOTHER FEDERAL AGENCY?" with boxes for "YES" and "NO." The "NO" box is checked. Tab 1, p. 2.

<sup>30</sup> SBIR Phase I – Proposal Cover Page: "The small business certifies that:" [question #4] "NSF is the only Federal agency that has received this proposal (or overlapping or equivalent proposal) from the small business concern. If No, you must disclose overlapping or equivalent proposals and awards as required by this solicitation." The company indicated "Y." Tab 1, p.3.

<sup>31</sup> Tab 1, p. 31.

<sup>32</sup> [REDACTED] was submitted to NSF by the company December 3, 2006 and lists the CTO as the PI. It was awarded [REDACTED] 2007 for \$[REDACTED]. The award period was [REDACTED], 2007 through [REDACTED] 2008 (following a no-cost extension). Tab 8.



### i. Facilities

We determined the company's address was the same as the subjects' residence. Accordingly, we reviewed the claims made about facilities within the award's proposal, which stated:

Currently, the company consists of 4 laboratories/centers. They are [REDACTED] and [REDACTED] lab, [REDACTED] and [REDACTED] lab, Center for [REDACTED], and Center for [REDACTED].<sup>33</sup>

Similar statements concerning the company's facilities also appear in both the original and the revised budget: "The R&D efforts require access to the [U1<sup>34</sup>] Cleanroom Facilities and [U2<sup>35</sup>] Nanofabrication Facilities *besides* [the company's] labs/centers."<sup>36</sup> The company's address has consistently been that of the subjects' residence, a condominium in a residential area, so it seemed unlikely that the description of the facilities was accurate.<sup>37</sup>

We contacted subject 1 seeking clarification about the duplicative proposals and the company's statements about facilities in the award.<sup>38, 39</sup> We also contacted U1 and U2 to determine if the company had permission to use their facilities. We learned the company had a legitimate contract with U2 and had sent a graduate student/research assistant there to carry out experiments. We subpoenaed documents from U1 through which we learned U1 had received a whistleblower's complaint concerning subject 1's misuse of a U1 laboratory and of student time. As part of its investigation,<sup>40</sup> U1 looked into the claims made on the company's website about its facilities.

U1's investigation report notes the description of the company's facilities on its web site mirrored those of U1.<sup>41</sup> The report concluded that by describing U1's facilities as if they were company facilities, "[subject 1] violated University conflict of interest policies by co-opting [U1's] property and identity for the benefit of his company".<sup>42</sup> U1 concluded, "Although the amount of incremental loss could not be

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<sup>33</sup> Tab 8, p. 20 (of pdf).

<sup>34</sup> U1 is the [REDACTED]. The subject was employed by U1 from 1999 to 2009, during the time he submitted and worked on the proposal and award.

<sup>35</sup> U2 is [REDACTED], located near the subjects' home.

<sup>36</sup> Tab 8, pp. 19, 29 [emphasis added].

<sup>37</sup> Subsequent proposals continued to use the same description of the company's facilities. See e.g., Tab 1, pp. 17-18.

<sup>38</sup> OIG's August 10, 2010 Letter to Subject is Tab 9.

<sup>39</sup> In his response, subject 1 indicated that he was too ill to respond to our questions; see Tab 10. Consequently, we wrote to subject 2 (Tab 11); however, subject 1 responded (Tab 12).

<sup>40</sup> U1's Investigation report, dated January 15, 2009 is at Tab 13. Page numbers refer to the pdf pagination.

<sup>41</sup> Tab 13, p. 5 (of pdf).

<sup>42</sup> *Ibid.*

quantified, [subject 1] admittedly used both the Microlab and the Nanolab, under the pretext of [U1] course instruction, for the benefit of [the company]."<sup>43</sup>

Based on the U1 report, we subpoenaed financial records from both the company and its bank. In responding to our questions about U1's facilities, subject 1 admitted, "There was no contract between [U1] and [the company] for the NSF award."<sup>44</sup> Nevertheless, records indicate \$5,235.52 was charged to the NSF award for use of U1's facilities.<sup>45</sup> Although award related work was performed at U1, the company did not reimburse U1. Subject 1 stated the approximately \$5,236 was transferred to the company's R&D account.<sup>46</sup> Due to his prior experience as a PI, subject 1 knew his company did not have the requisite permission from U1 to use its facilities at the time the awarded proposal was submitted, but included U1's facilities in the NSF proposal anyway.<sup>47</sup> Furthermore, when the NSF program officer (PO) requested a copy of the signed agreements pertaining to the use of U1's and U2's facilities,<sup>48</sup> subject 2 stated the facilities "are open to industries with moderate recharges and do not require any signed agreement to use."<sup>49</sup> This assertion was contradicted by subject 2's signature the next day on a contract with U2 to use its facilities.<sup>50</sup> In addition, the subjects also knew from past experience that U1 also required such a contract.<sup>51</sup>

## ii. Subject 2/PI's Award-Related Work.

NSF requires the PI of an SBIR Phase I award devote a minimum of a calendar month to the project.<sup>52</sup> This requirement is specified by the award solicitation<sup>53</sup> and incorporated by reference in the award letter.<sup>54</sup> None of the

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<sup>43</sup> *Id.*, p. 10.

<sup>44</sup> Tab 14 A, p. 1.

<sup>45</sup> Tab 14 B.

<sup>46</sup> Tab 14 C, #4; Tab 23.

<sup>47</sup> The proposal stated "To carry out the state of the art proposed project, state-of-the-art equipment facility in nanotechnology is needed. We will use the [U1] Research Laboratory and [U2] Facility for the project. Both facilities are state-of-the-art cleanroom facilities open to industries with modest charges on use of the cleanroom labs and equipment/instruments."

<sup>48</sup> The PO said he requests the contracts or agreements to ensure the rates are consistent with the budget.

<sup>49</sup> Tab 15, April 30, 2007 email from subject 2 to the NSF program officer.

<sup>50</sup> See Tab 14 A, p. 4. She signed the U2 contract on May 1, 2007, the day after the April 30, 2007 email to the NSF program officer.

<sup>51</sup> See also Tab 13, pp. 2-3 discussing the previous contract with the company.

<sup>52</sup> "The primary employment of the Principal Investigator (PI) must be with the small business concern at the time of the award. A PI must spend a minimum of one calendar month of an SBIR Phase I project." See NSF 06-958 at <http://www.nsf.gov/pubs/2006/nsf06598/nsf06598.html>

<sup>53</sup> Small Business Innovation Research and Small Business Technology Transfer Programs Phase I Solicitation FY-2007, NSF 06-598. Tab 16, p. 3.

<sup>54</sup> Award letter: "This grant is awarded pursuant to the authority of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-75) and is subject to NSF Program Solicitation, "Small Business Innovation Research and Small Business Technology Transfer Programs Phase I Solicitation FY-2007, (NSF 06-598) and SBIR Phase I Grant General Conditions (11/05)." Tab 17.

documents provided by the company support the requisite level of effort by subject 2.

The proposal states the work will be predominately performed at U1 and U2: "There are no equipment and instrument purchases proposed. This is because a great portion of the proposed efforts will be performed at [U1's] clean room and [U2's] Nanofabrication Facilities."<sup>55</sup> Our review of the evidence supports this statement. For example, subject 1 indicated to U1 officials during their investigation that approximately half the research on the award occurred at U1.<sup>56</sup> Based on the financial records, we know an undergraduate performed some of the efforts at U1,<sup>57</sup> and another student under subject 1's supervision also performed work using U1's facilities.<sup>58</sup> U2 invoices show that a graduate student/researcher performed additional work using U2's facilities.<sup>59</sup>

After a complete review of the evidence provided, including U1's investigation report, there is no evidence subject 2, the nominal PI, performed any of the research.<sup>60</sup> Similarly, other than attend the NSF meeting, there is no evidence subject 2 made any contribution to the NSF award,<sup>61</sup> nor is there any indication she spent the requisite calendar month working on the project. However, the company requested the initial payment of 2/3<sup>rd</sup>s of the award, and never notified the PO of subject 2's lack of involvement.

In contrast, the final report submitted to NSF states that subject 2, the PI, worked 160 hours on the award.<sup>62</sup> We also know, through the general ledger, the NSF award was charged \$36,483 for subject 2's efforts. Although, we were told she was not paid, rather her "salary was converted to [the company's] R &D reserve account."<sup>63</sup>

### iii. Role of Subject 1

In addition to the misstatements about the facilities, the award proposal states subject 1 is a PI with [U1]: "The [U1] Microfabrication Laboratory is a cleanroom facility for teaching and research ... where [subject 1] is the Principal Investigator since 1999."<sup>64</sup> The CV included with the proposal states subject 1 was a Principle Investigator at U1's lab from May 1999–present.<sup>65</sup> In fact, subject 1 had a non-staff position as laboratory manager and had been the PI of a single DOD

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<sup>55</sup> Tab 8, p. 29 (of pdf).

<sup>56</sup> Tab 13, p. 6 (of pdf).

<sup>57</sup> Tab 14 E.

<sup>58</sup> Tab 14 C.

<sup>59</sup> Tab 14 D.

<sup>60</sup> There is no mention of her doing work at U1's lab or any invoices from U2 showing that she performed work at U2.

<sup>61</sup> Tab 14 F.

<sup>62</sup> Tab 18, p. 1.

<sup>63</sup> Tab 14 G.

<sup>64</sup> Tab 8, p 20, Section 3.6.

<sup>65</sup> Tab 8, p. 25.

award from 2004-2005,<sup>66</sup> one that required written permission of U1. Similarly, the letter of support subject 1 wrote on U1 letterhead states the company is an "industrial affiliate supporting the undergraduate research experiences program at [U1]."<sup>67</sup> However, there was no official connection between the company and U1, and subject 1 was not a PI at the time of the company's proposal submission to NSF.

When questioned by U1, Subject 1 initially denied having a company; he referred to subject 2 as the company's cofounder, never informed U1 that Subject 2 was also his wife, and he attempted to distance himself from the company, claiming he had nothing to do with [the company's] "management" since May 2004".<sup>68</sup> This contradicts a different statement in which subject 1 admitted he directed some of the students' independent projects toward areas of interest to the company.<sup>69</sup> In its report, U1 determined "A lack of forthrightness pervaded [subject 1's] written and oral statements with respect to [the company]." OIG found a similar lack of forthrightness when dealing with the subject. Ultimately, U1 terminated the subject 1 for misconduct in March 2009.<sup>70</sup>

### C. Misuse of NSF Funds

Subject 1 provided a general ledger and other supporting documentation,<sup>71</sup> but did not initially address our question as to why the NSF award was charged \$5,325 for the use of U1 facilities when no corresponding payments were made to U1.<sup>72</sup> In response to our subpoena, the company stated a) NSF-related work was performed at U1 by a former REU student under subject 1; b) analyses were done and received with no invoice; c) the efforts on the NSF-related analyses were charged to the award that the company is obligated to pay; and d) the money of the charge was converted to the company's R&D reserve."<sup>73</sup> Thus, the company charged work to NSF that was not invoiced to U1, and put the money in its R&D account, instead of paying it to U1.

In a later response, subject 1, contradicting his subpoena response and statements to U1, stated he did not actually use the U1 facility for his NSF

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<sup>66</sup> In 2004, subject 1 had been allowed to serve as a PI on a DOD award, at which time U1 had entered into a contract and agreed to let the company use its facilities solely for the 1 year the company received the STTR award from Department of Defense. Tab 19

<sup>67</sup> Tab 8, p. 34

<sup>68</sup> Tab 13, p. 8

<sup>69</sup> *Id.*, p. 7. With regard to other students whom the company paid, the report stated, "Despite the compensation they receive from [the company], it is not known whether the students perceived their grades might be at risk if . . . they refused to work for [subject 1's] outside company, . . . they resigned [from] the company, . . . [or if] they questioned [subject 1's] use of [U1] laboratory equipment, etc for the benefit of the company." *Id.*, p. 9

<sup>70</sup> See Tab 20.

<sup>71</sup> Tab 14, A-H.

<sup>72</sup> See Tabs 21-24, correspondence between NSF and subject 1.

<sup>73</sup> Tab 14 C. At the time of his response, subject 1 knew, based on the U1's Investigation report, that he would not be invoiced for the use of U1's facilities because U1 could not quantify the damage.

research;<sup>74</sup> he now described that charge [the \$5,235] as the amount of a recharge for what the REU student<sup>75</sup> would have cost the company to reimburse U1. Thus, he considered it legitimate to transfer that money into the company's R&D account. We note the company did not pay U1, so it is unclear why it was reasonable that the cost of the student's free labor or the costs of the company's use of U1 facilities were allocated to the NSF award and ultimately placed in the company's coffers.<sup>76</sup> Ultimately, subject 1 returned \$5,235.52 charged to NSF in direct costs for the use of U1's lab, which, by his admission, was unallocable.<sup>77</sup>

### OIG's Assessment

#### *Duplicate submission and false certification*

The company submitted a proposal to NSF's SBIR program that was substantially similar to a proposal it submitted to DOE—the technical approach, technical objectives, and work plan from the DOE proposal are duplicated verbatim (text and figures) in the NSF proposal. Subject 1, as the PI of the NSF proposal, and subject 2, as the PI of the DOE proposal and AOR of both proposals, are both responsible for this duplicate submission to NSF and obfuscation of its duplication. Subject 2, as AOR, certified to NSF, in two places, that the proposal was not submitted elsewhere; likewise subject 1 omitted listing the DOE proposal from the NSF proposal's Current and Pending Support (CAPS) page. Thus, we conclude subject 2 falsely certified that the proposal had not been submitted elsewhere on both the proposal Cover Sheet and the separate SBIR certification.<sup>78</sup>

#### *False Statements in Proposals*

The subjects submitted multiple proposals, one awarded, which falsely claimed the company had four laboratories and the company could use facilities at U1 to complete the research,<sup>79</sup> although the company has no facilities of its own. Furthermore, during the period of its NSF award, the company had no agreement with U1 for the use of U1's facilities. Indeed, U1 investigated the subject 1 for

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<sup>74</sup> Subject 1 wrote, "[The company] did not actually use the [U1] Cleanroom for the NSF project but a REU student under me at [U1] for research experiences. Therefore, there were no invoices directly from the [U1] Cleanroom to [the company] but recharges to me at [U1] for undergraduate research experiences through the NSF project, which were paid from the leftover money under the [the company]/DOD project. The recharge summary reports are attached to you in this response as attachment 3. The situation of the X-ray analysis for the NSF project is similar. The recharge, however, was estimated. There were no invoice and no payment." Subject 1's Apr 2, 2012 response at Tab 24, p. 2.

<sup>75</sup> [REDACTED]

<sup>76</sup> Tab 24.

<sup>77</sup> The company returned the direct charge, but not the associated indirect cost and fee%. Tab 25.

<sup>78</sup> Tab 8, pp 2 & 3.

<sup>79</sup> See, for example, Tab 8, p. 20.

unauthorized use of its facilities. The subjects misrepresented to NSF (and DOE) both the company's own facilities and the company's access to others' facilities.

In addition to the misstatements about the facilities, the letter of support and CVs included in the proposals imply that subject 1 was a current PI with U1.<sup>80</sup> Furthermore, subject 1 used U1 letterhead to write a letter of support for his own company.<sup>81</sup> In that letter, he incorrectly indicated that he was a current PI at U1 and that the company had special status as an "industrial affiliate" of U1. Both the use of the letterhead and the statements within the letter were designed to give a false impression of an ongoing relationship between U1 and the company that simply did not exist.

#### *False Statements in the Final Report*

The final project report states: "[U1] Microfabrication Laboratory under [subject 1] provided us two undergraduates for integrated [topic] education research experiences to participate in the research and development of the project."<sup>82</sup> From the U1 investigation report, we know this is not accurate. Analogous with the subjects' claims of facilities, it is true that subject 1 used students, but we agree with U1, that subject 1's use of facilities and student time for his company's benefit was unauthorized and inappropriate.

The company provided no evidence to show subject 2 performed any research on the award, much less the 160 hours that the final report claims. Nonetheless, subject 2 signed both as PI and as authorized company officer the SBIR/STTR Phase I Final Report Cover Page thereby agreeing to the statement: "I certify that to the best of my knowledge the work for which payment is hereby requested was performed in accordance with the award terms and conditions and that payment is due and has not been previously requested."<sup>83</sup>

#### *Financial Misconduct*

Per the NSF solicitation: "Reasonable fees (estimated profit) will be considered under Phase I. The amount of the fee approved by NSF cannot exceed seven percent (7%) of the total indirect and direct project costs."<sup>84</sup> Based on our review of the general ledger and other documents sent by the company, we believe that the company's actual profit margin was 47% of the award, \$ [REDACTED] of the \$ [REDACTED] awarded.<sup>85</sup> Our calculations include the salary and fringe benefit rate of

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<sup>80</sup> Tab 8, pp. 20 and 25.

<sup>81</sup> *Id.*, p. 34.

<sup>82</sup> Tab 26, p. 2.

<sup>83</sup> *Id.*, p. 4.

<sup>84</sup> Solicitation, section A.9.6. Budget; Tab 16, p. 15

<sup>85</sup> See table below. Calculations based on indirect cost and fee cost in approved NSF budget (see Award letter Tab 17), general ledger (Tab 14 B) and notes on accounting system and record keeping (Tab 14 H).

SENSITIVE

subject 2, the unpaid undergraduate student,<sup>86, 87</sup> and the unpaid costs of U1's laboratory, plus the indirect cost (54.5%) and fee cost (5%) associated with each.<sup>88</sup> We credited the company with the \$5,235 of direct cost related to U1 facilities returned to NSF. The items were charged against the NSF award and placed in the company's R&D account.<sup>89</sup>

Mischarges to NSF Award						
(A) Item/GL Charge <sup>90</sup>	(B) Direct Costs	(C) Fringe	(D) Direct + Fringe (B+C)	(E) Indirect (D*54%)	Total (D) + (E)	Comment
Subject 2 -PI	\$18,891.49 Salary	\$4,722.87 (25%)	\$23,689.63	\$12,689.63	\$36,483.99	Only activity documented was attending NSF meeting <sup>91</sup>
Undergrad Student	\$3,000 Salary	\$300 (10%)	\$3,300	\$1,798.50	\$5,098.50	Not paid
UI facilities	\$5,235.52	-	-			\$5,235 returned to NSF
Total					\$	
Adjusted total					(\$5,235)	Deducting amount returned
Fee charged (5%)						
<b>TOTAL</b>					\$	<b>47% of award</b>

<sup>86</sup> Tab 14 B, the general ledger indicates that \$3,000 was used to pay a student who worked on the NSF award.

<sup>87</sup> Tab 14 E. The provided documentation states the student was never paid.

<sup>88</sup> See Tab 14 H.

<sup>89</sup> See Tab 14C (student); Tab 14 E (unpaid undergraduate student); and Tab 14 F (subject 2).

<sup>90</sup> The company submitted a general ledger in response to an NSF OIG subpoena.

<sup>91</sup> Subject 1 indicated that the portion of the award performed at U1 was done so by an undergraduate student under Subject 1. A graduate student is listed on the invoices from U2.

The company booked charges against the NSF award pertaining to subject 1, an undergraduate student, and U1 facilities that it never paid. In spite of returning \$5,235, the company retained an excess profit of 47% ( ), well in excess of the 7% to which NSF agreed.

### Department of Justice Assessment

Given the potential false certifications of the duplicative proposal and the potential false statements in multiple proposals for the facilities, we contacted the Department of Justice to inquire if it was interested in prosecution. It declined due to the small harm to the government (the duplicative proposal was declined and the low-dollar amount of the associated financial misconduct) and in lieu of administrative action.

### Debarment

#### A. Grounds for Debarment

NSF has the authority to debar an individual or entity for "[v]iolation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program ...."<sup>92</sup> Such a violation occurs when the individual or entity commits a "willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction ...."<sup>93</sup> Furthermore, NSF has the authority to debar an individual or entity for "[a]ny other cause of so serious or compelling a nature that it affects [the person's or entity's] present responsibility."<sup>94</sup>

The subjects submitted duplicative, plagiarized proposals to DOE (subject 2 as PI) and NSF (subject 1 as PI) on behalf of the company. Subject 2, as AOR and company president falsely certified that the duplicative proposal submitted to NSF had not been submitted to any other federal agency. The subjects also submitted another proposal, later awarded by NSF, which contained misstatements about the company's facilities. Subject 1 also included a letter of support on U1 letterhead indicting two REU students would work on the projects and U1 labs would be used for company work, and he would assign two students to work on the project. Subject 1 had no authority to commit the resources of U1 or assign students, he was later fired for these very acts.

We determined subject 2 misled the PO when stating that the company did not need written contracts to use U1 or U2's facilities. Furthermore, when responding to our subpoena, subject 1 provided a general ledger that charged the

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<sup>92</sup> 2 C.F.R. § 180.800 (b).

<sup>93</sup> 2 C.F.R. § 180.800 (b)(3).

<sup>94</sup> 2 C.F.R. § 180.800 (d).



costs of the U1 facilities and a student to the NSF award. We later learned the company never paid for either the use of U1 facilities or the student. The company also claimed in the final report that subject 2 worked over 160 hours, yet we can find nothing to support this claim. Consequently, the salary, fringe benefits and associated indirect and fee cost expended for subject 2, the student and the lab were improperly charged against the NSF award. Because of the bad acts of subject 1 and subject 2, committed on behalf of their company, the company was able to increase its profit margin from the agreed upon 5% to 47%, far exceeding the maximum profit of 7% permitted by the SBIR program.

The subjects' actions constitute both "[v]iolation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program ..." <sup>95</sup> and "willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction ...." <sup>96</sup> Taken as a whole, their actions cast serious doubt on the subjects' "present responsibility". <sup>97</sup>

The company was owned by the subjects during the period at issue and is the entity through which subjects submitted the proposals. The company is directly or indirectly controlled by the subjects; the company's business address is the subjects' home address. Thus, the company is an affiliate of the subjects, and the subjects used the company to effectuate their actions. Further, the subjects' individual actions may be imputed to the company because their actions occurred in connection with their duties as Principal Investigators and Authorized Organizational Representative for the company. Accordingly, we recommend both subjects and the company be debarred. <sup>98</sup>

### Burden of Proof

In debarment actions, the burden of proof lies with NSF to demonstrate by a preponderance of the evidence that cause for debarment exists. Here, the preponderance of the evidence amply demonstrates that the subjects violated the trust NSF expects of PIs, AORs, and awardees, and the subjects lack present responsibility to be considered viable research partners with NSF.

### **Relevant Factors**

The debarment regulation lists 19 factors that the debarring official may consider. <sup>99</sup> Listed below are the factors pertinent to this case, and they are equally relevant to the subjects and to the company:

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<sup>95</sup> 2 C.F.R. § 180.800 (b).

<sup>96</sup> 2 C.F.R. § 180.800 (b)(3).

<sup>97</sup> 2 C.F.R. § 180.800 (d).

<sup>98</sup> 2 C.F.R. § 180.905 (definition of affiliate); 2 C.F.R. § 180.625 (scope of debarment may include an affiliate); 2 C.F.R. § 180.630 (imputation of conduct permitted).

<sup>99</sup> 2 C.F.R. § 180.860.

### 1. Actual or Potential Harm or Impact<sup>100</sup>

The harm to NSF is minimally \$ [REDACTED]—the unearned profit the company improperly obtained from the NSF award, primarily for subject 2's unearned salary. The company submitted substantially similar proposals, proposals containing plagiarism, to both DOE and NSF. In addition to containing plagiarism, the subjects falsely certified its originality to NSF, thereby depriving NSF of needed information for the accurate and complete review of this proposal.

### 2. Frequency of incidents/duration of wrongdoing.<sup>101</sup>

The company misrepresented its facilities to NSF and DOE in six proposals from 2006 through 2009. In addition, the subjects have misrepresented the nature of their company since December 2006, when they submitted two proposals (one funded) to NSF. Both proposals contained a cover letter and CV from subject 1 purporting to evince his experience as a PI at U1 and claiming the company, as an industrial affiliate, had some sort of ongoing relationship with U1. In truth, the only link between the company and U1 was U1's employment of subject 1. Subject 1 was the PI on a single award with the University's permission. He had neither the right nor permission to use U1's facilities or student time after the expiration of that award—more than a year before the funded NSF proposal was submitted. Furthermore, in a conflict-of-interest disclosure provided to U1, subject 1 disavowed any role in the management of the company after 2004. U1 determined his actions with regard to its facilities and students constituted a conflict of interests.

The company, with subject 2 as PI, accepted an NSF award knowing they did not have the proper permissions from U1 to do the work. In spite of the fact that there was no feasible way for subject 2 to do the research required, the company requested the initial payment of 2/3rds of the award. After the award ended, the subjects submitted a final report for which subject 2 certified that the work had been done in accordance with the terms and conditions of the awards; they did this despite knowing they had not incurred charges for the use of the students or U1's facilities, and that subject 2 had not worked for the requisite amount of time. Nonetheless, they requested, and received, the final NSF payment.

### 3. Pattern or Prior History<sup>102</sup>

Since 2006, the subjects have submitted five proposals to NSF in which they claim the company has four laboratories and centers.<sup>103</sup> As mentioned in U1's investigative report, subject 1 violated U1's conflict of interest policy.<sup>104</sup> In addition to misuse of university resources and student time, subject 1 has, over time, attempted to obscure his connection to the company. Subject 2 has acted as

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<sup>100</sup> 2 C.F.R. § 180.860 (a).

<sup>101</sup> 2 C.F.R. § 180.860 (b).

<sup>102</sup> 2 C.F.R. § 180.860 (c).

<sup>103</sup> Tab 27.

<sup>104</sup> Tab 13, p. 5.

AOR/President and CTO of the company for all of the submitted proposals. Each of the five proposals the company submitted to NSF over a period of 2.5 years contained a misrepresentation of the company's facilities. Other than having submitted practically the same plagiarized proposal to both NSF and DOE, we found no pattern of plagiarism.

#### 4. Role in Wrongdoing<sup>105</sup>

The subjects have submitted five proposals to NSF through their company, all of which contain false information about the company's facilities. Subject 2 had been the AOR and company president on all of the proposals. She has also been the PI on three. Subject 1 has been the PI on two NSF proposals and is responsible for the misuse of U1's facilities and student time. His behavior was so egregious that he was fired from U1 based on his actions. As founders and principles of the company, the subjects are responsible for all of the wrongdoing we discovered. Subject 1, as PI, is fully responsible for the plagiarism in his NSF proposal. Subject 2 as the PI of the proposal to the DOE, knew the proposal subject 1 submitted to NSF was duplicative (because she had submitted substantially the same proposal to DOE a few months prior), yet she twice certified (as AOR and president) that the NSF proposal was not submitted elsewhere. Similarly both are responsible for the omission from the CAPS page.

Subject 2 submitted false certifications with the final report of the company's NSF awards stating all the work had been done in accordance with the award's terms and conditions. She was the PI and AOR of the grant to which she charged NSF \$5,235 for the use of U1's facilities and students, although no such payments were made to U1. When pressed on this matter, subject 1 repaid \$5,235.

#### 5. Acceptance of Responsibility<sup>106</sup>

Subject 1 initially blamed someone else for the plagiarism, but did not provide the name of the allegedly responsible person. Although he conceded to some inappropriate citations, he did not acknowledge he plagiarized.

Subject 1 provided explanations for his submission of a duplicate proposal, but failed to accept responsibility for the false certifications and omission of the DOE proposal from the CAPS page.<sup>107</sup> With regard to the misrepresented facilities, subject 1 provided a convoluted explanation about why he was allowed to use U1's facilities and REU students without its permission, so does not accept it was wrong to do so. The U1 investigators noted: "At the conclusion of our interview, [subject 1] stated the position that he did nothing wrong by utilizing [U1's] property and students in the manner [he did]."<sup>108</sup>

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<sup>105</sup> 2 C.F.R. § 180.860 (f).

<sup>106</sup> 2 C.F.R. § 180.860 (g).

<sup>107</sup> We never received any statements from subject 2 because even when we wrote to subject 2, subject 1 answered for her. See response # 9 (below) for Positions held by the subjects.

<sup>108</sup> Tab 13, p. 7.

Subject 2 chose not respond to the letters we address to her, nor did she respond to our subpoena, so we have no basis on which to judge her actions, other than note she falsely certified to the originality of the NSF proposal and that the work on the NSF award had been done in accordance with its terms and conditions.

Subject 1 admitted the company did not pay U1 for use of U1's facilities and repaid NSF \$5,235, although subject 2 was the PI and AOR of the grant, and President of the company when it charged to the grant the unallocable expense.

#### 6. Repayment<sup>109</sup>

When questioned about whether the \$5,235.52, representing the charges for the company's use of U1 facility was allocable, subject 1 returned that amount, although he still tried to articulate why he thought the charge was justified. However, he did not return the associated indirect costs or the fee (5%) associated with the charge. The company has not been specifically asked about, nor has it returned, the remainder of the funds that it misused.

#### 7. Fully cooperated with the government during the investigation<sup>110</sup>

Although subject1 nominally cooperated, he did not fully cooperate. U1 determined his actions with regard to its facilities and students were wrong, and the report indicated "a lack of forthrightness pervaded [subject 1's] written and oral statements".<sup>111</sup> We found a similar lack of forthrightness. He changed his statements regarding the use of U1 facilities and students and provided varying justifications for the company's decision to keep over to \$ [REDACTED] in funds from the NSF award. Subject 2 did not respond to any of our questions; thus, we conclude she did not cooperate.

#### 8. Pervasiveness of Wrongdoing<sup>112</sup>

The subjects are essentially the company—they own and operate it. Over a course of 2.5 years, the subjects have consistently misstated the facilities on NSF proposals, and misstated their affiliation with U1. Both submitted proposals to federal agencies containing plagiarized text. Subject 2 falsely certified the originality of a proposal submitted to NSF. Subject 1 improperly used the facilities of U1 and failed to properly disclose his affiliation with the company to his employer U1. Therefore, the wrongdoing is pervasive.

#### 9. Positions Held by the Subjects<sup>113</sup>

The subjects co-founded the company, owned it, and operated it. In fact, it was run from their home. Subject 2 has been the AOR and president on all the proposals to NSF, however she never responded to our inquiries. Subject 1 appears

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<sup>109</sup> 2 C.F.R. § 180.860 (h).

<sup>110</sup> 2 C.F.R. § 180.860 (i).

<sup>111</sup> Tab 13, p. 8.

<sup>112</sup> 2 C.F.R. § 180.860 (j).

<sup>113</sup> 2 C.F.R. § 180.860 (k).

to have taken or control of the company since his dismissal from U1, he alone has responded to our correspondence, even those addressed to subject 2. Subject 1 also responded to the subpoena issued to the company.

As an employee of U1, subject 1 exploited his university position for the benefit of his company. He improperly used both facilities and students to do the research required by the NSF award, because he admittedly pushed students to work on areas of benefit to the company.

#### 10. Effective Standards and Internal Controls<sup>114</sup>

The company is a small business owned and operated by the subjects. As such, there is no compliance officer or anyone to review the owners' decisions, so no internal controls.

#### Recommendation for Other Acts

Based on the evidence, we recommend NSF debar both subjects and the company for 3 years.<sup>115</sup>

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<sup>114</sup> 2 C.F.R. § 180.860 (p).

<sup>115</sup> The subjects were sent a copy of this report, but only responded orally through subject 1. His statements are summarized on p. 6.

NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230



OFFICE OF THE  
DEPUTY DIRECTOR

██████████ 2014

**CERTIFIED MAIL --RETURN RECEIPT REQUESTED**

██████████  
██████████  
██████████

*Re: Notice of Debarment*

Dear Ms. ██████████

On ██████████, 2013, the National Science Foundation (NSF) issued you a Notice of Proposed Debarment. This Notice proposed to debar you and your company, ██████████, from directly or indirectly obtaining the benefits of Federal grants for a period of three years. As reflected in the Notice, you and your company's proposed debarment was based on 1) false certifications and statements you made to NSF, and 2) your misuse of NSF funds. In that Notice, NSF provided you with thirty days to respond to the proposed debarment.

NSF did not receive a response from you within the subscribed period, and on ██████████ 2014, NSF sent you a Final Notice of Debarment. You subsequently informed NSF that, due to a change of address, you never received the original Notice of Proposed Debarment. As such, NSF re-sent the Notice of Proposed Debarment which you received via certified mail on ██████████ 2014.

Over thirty days have elapsed since you received the re-sent Notice of Proposed Debarment, and NSF has not received a response from you or your company. Accordingly, you are debarred until ██████████ 2016.

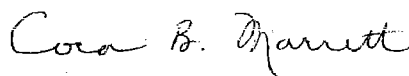
Debarment precludes you and your company from receiving Federal financial and non-financial assistance and benefits under non-procurement Federal programs and activities unless an agency head or authorized designee makes a determination to grant an exception in accordance with 2 CFR 180.135. Non-procurement transactions include grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

In addition, you and your company are prohibited from receiving Federal contracts or approved subcontracts under the Federal Acquisition Regulations at 48 CFR subpart 9.4 for the period of

this debarment. 2 CFR 180.925. During the debarment period, you may not have supervisory responsibility, primary management, substantive control over, or critical influence on, a grant, contract, or cooperative agreement with any agency of the Executive Branch of the Federal Government.

Should you have any questions about the foregoing, please contact [REDACTED]  
[REDACTED] at (703) 292-8060.

Sincerely,

A handwritten signature in cursive script that reads "Cora B. Marrett".

Cora B. Marrett  
Deputy Director

NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230



OFFICE OF THE  
DEPUTY DIRECTOR

[REDACTED] 2014

**CERTIFIED MAIL --RETURN RECEIPT REQUESTED**

[REDACTED]

*Re: Notice of Debarment*

Dear Dr. [REDACTED]

On [REDACTED] 2013, the National Science Foundation (NSF) issued you a Notice of Proposed Debarment. This Notice proposed to debar you from directly or indirectly obtaining the benefits of Federal grants for a period of three years. As reflected in the Notice, your proposed debarment was based on 1) false certifications and statements you made to NSF, and 2) your misuse of NSF funds. In that Notice, NSF provided you with thirty days to respond to the proposed debarment.

NSF did not receive a response from you within the subscribed period, and on [REDACTED] 2014, NSF sent you a Final Notice of Debarment. You subsequently contacted NSF to inform us that, due to a change of address, you never received the original Notice of Proposed Debarment. As such, NSF re-sent the Notice of Proposed Debarment which you received via certified mail on [REDACTED] 2014.

Over thirty days have elapsed since you received the re-sent Notice of Proposed Debarment, and NSF has not received a response from you. Accordingly, you are debarred until [REDACTED] 2016.

Debarment precludes you from receiving Federal financial and non-financial assistance and benefits under non-procurement Federal programs and activities unless an agency head or authorized designee makes a determination to grant an exception in accordance with 2 CFR 180.135. Non-procurement transactions include grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

In addition, you are prohibited from receiving Federal contracts or approved subcontracts under the Federal Acquisition Regulations at 48 CFR subpart 9.4 for the period of this debarment. 2



CFR 180.925. During the debarment period, you may not have supervisory responsibility, primary management, substantive control over, or critical influence on, a grant, contract, or cooperative agreement with any agency of the Executive Branch of the Federal Government.

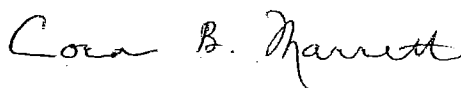
Please note that, in the Notice, NSF also took the following actions against you, which continue to remain in effect:

- For three years from the end of your debarment period, you are required to submit certifications that any proposals or reports you submit to NSF do not contain plagiarized, falsified, or fabricated material; and
- You are prohibited from serving as an NSF reviewer, advisor, or consultant through [REDACTED], 2016.

All certifications should be submitted in writing to NSF's OIG, Associate Inspector General for Investigations, 4201 Wilson Boulevard, Arlington, VA 22230.

Should you have any questions about the foregoing, please contact [REDACTED], at (703) 292-8060.

Sincerely,



Cora B. Marrett  
Deputy Director

NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230



OFFICE OF THE  
DEPUTY DIRECTOR



CERTIFIED MAIL --RETURN RECEIPT REQUESTED



*Resent pkg to  
corrected  
address on*



*Re: Notice of Proposed Debarment*

Dear Ms. [REDACTED]

In light of your misconduct, this letter serves as formal notice that the National Science Foundation ("NSF") is proposing to debar you and [REDACTED] (the "Company") from directly or indirectly obtaining the benefits of Federal grants for three years. During this period of debarment, you and the Company will be precluded from receiving Federal financial and non-financial assistance and benefits under non-procurement Federal programs and activities. In addition, you and the Company will be prohibited from receiving any Federal contracts or approved subcontracts under the Federal Acquisition Regulations ("FAR"). Lastly, during this debarment period, you and the Company will be barred from having supervisory responsibility, primary management, substantive control over, or critical influence on, a grant, contract, or cooperative agreement with any agency of the Executive Branch of the Federal Government.

*Reason for Debarment*

NSF is proposing debarment against you and the Company based upon a referral from NSF's Office of Inspector General ("OIG"). In accordance with the OIG's investigative report, you served as the Authorized Organizational Representative ("AOR") and President of the Company during the timeframe in which the Company submitted several proposals to NSF. You also served as Principal Investigator on three of these proposals. A review of these proposals demonstrates that you made false certifications and statements to NSF, and committed financial misconduct.

### *Regulatory Basis for Debarment*

Pursuant to 2 CFR 180.800, debarment may be imposed for:

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program, such as --

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or

\*\*\*

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility:

In any debarment action, the government must establish the cause for debarment by a preponderance of the evidence. 2 CFR 180.850. Your misconduct, as set forth in the OIG's investigative report, supports a cause for debarment under 2 CFR 180.800(b)(3) and (d). Moreover, your misconduct occurred in connection with your performance of duties for or on behalf of the Company, or with the Company's knowledge, approval, or acquiescence. Thus, NSF may impute your conduct to the Company in accordance with the government-wide debarment regulations. 2 CFR 180.630.

### *Length of Debarment*

Debarment must be for a period commensurate with the seriousness of the causes upon which an individual's debarment is based. 2 CFR 180.865. Generally, a period of debarment should not exceed three years but, where circumstances warrant, a longer period may be imposed. *Id.* Having considered the seriousness of your actions, as well as the relevant aggravating and mitigating factors set forth in 2 CFR 180.860, we are proposing debarment for a period of three years.

### *Procedures Governing Proposed Debarment*

The provisions of 2 CFR Sections 180.800 through 180.885 govern debarment procedures and decision-making. Under our regulations, you and the Company have 30 days after receipt of this notice to submit, in person, or in writing, or through a representative, information and argument in opposition to this proposed debarment. 2 CFR 180.815, 180.820. Comments submitted within the 30-day period **will receive full consideration** and may lead to a revision of the recommended disposition. If NSF does not receive a response to this notice within the 30-day period, this debarment will become final.

Any response you choose to submit should be addressed to Lawrence ~~Rudolph~~, General Counsel, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230. For your information, we are attaching a copy of the Foundation's regulations on non-procurement debarment and FAR Subpart 9.4.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fae Korsmo", written in dark ink.

Fae Korsmo  
Senior Advisor

Enclosures:  
OIG Investigative Report  
Nonprocurement Debarment Regulations  
FAR Regulations

NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230



OFFICE OF THE  
DEPUTY DIRECTOR

CERTIFIED MAIL --RETURN RECEIPT REQUESTED

*Recent pkg  
to correct  
address on*

*Re: Notice of Proposed Debarment and Notice of Research Misconduct Determination*

Dear Dr. [REDACTED]

You served as a Principal Investigator ("PI") on a proposal submitted for funding to the National Science Foundation ("NSF") entitled, "[REDACTED]". As documented in the attached investigative report prepared by NSF's Office of Inspector General ("OIG"), your proposal contained plagiarized material. In addition, you co-founded [REDACTED] (the "Company"), which submitted four additional proposals to NSF. You served as PI on one of these proposals. A review of these proposals demonstrates that you made false statements to NSF, and committed financial misconduct.

In light of your misconduct, this letter serves as formal notice that NSF is proposing to debar you from directly or indirectly obtaining the benefits of Federal grants for three years. During your period of debarment, you will be precluded from receiving Federal financial and non-financial assistance and benefits under non-procurement Federal programs and activities. In addition, you will be prohibited from receiving any Federal contracts or approved subcontracts under the Federal Acquisition Regulations ("FAR"). Lastly, during your debarment period, you will be barred from having supervisory responsibility, primary management, substantive control over, or critical influence on, a grant, contract, or cooperative agreement with any agency of the Executive Branch of the Federal Government.

In addition to proposing your debarment, I am prohibiting you from serving as an NSF reviewer, advisor, or consultant to NSF until [REDACTED] 2016. Furthermore, for three years from the expiration of your debarment period, I am requiring that you submit certifications that any proposals or reports you submit to NSF do not contain plagiarized, falsified, or fabricated material.

Research Misconduct and Administrative Actions other than Debarment

Under NSF's regulations, "research misconduct" is defined as "fabrication, falsification, or plagiarism in proposing or performing research funded by NSF..." 45 CFR § 689.1(a). NSF defines "plagiarism" as "the appropriation of another person's ideas, processes, results or words without giving appropriate credit." 45 CFR § 689.1(a)(3). A finding of research misconduct

requires that:

- (1) There be a significant departure from accepted practices of the relevant research community; and
- (2) The research misconduct be committed intentionally, or knowingly, or recklessly; and
- (3) The allegation be proven by a preponderance of evidence.

45 CFR § 689.2(c).

Your proposal contained 154 lines of copied text and one copied figure from eight sources. By submitting a proposal to NSF that copied the ideas or words of another without adequate attribution, as described in the OIG investigative report, you misrepresented someone else's work as your own. Your conduct unquestionably constitutes plagiarism. I therefore conclude that your actions meet the applicable definition of "research misconduct" set forth in NSF's regulations.

Pursuant to NSF's regulations, the Foundation must also determine whether to make a *finding* of misconduct based on a preponderance of the evidence. 45 CFR § 689.2(c). After reviewing the Investigative Report, NSF has determined that, based on a preponderance of the evidence, your plagiarism was committed knowingly and constituted a significant departure from accepted practices of the relevant research community. I am, therefore, issuing a finding of research misconduct against you.

NSF's regulations establish three categories of actions (Group I, II, and III) that can be taken in response to a finding of misconduct. 45 CFR § 689.3(a). Group I actions include issuing a letter of reprimand; conditioning awards on prior approval of particular activities from NSF; requiring that an institution or individual obtain special prior approval of particular activities from NSF; and requiring that an institutional representative certify as to the accuracy of reports or certifications of compliance with particular requirements. 45 CFR § 689.3(a)(1). Group II actions include award suspension or restrictions on designated activities or expenditures; requiring special reviews of requests for funding; and requiring correction to the research record. 45 CFR § 689.3(a)(2). Group III actions include suspension or termination of awards; prohibitions on participation as NSF reviewers, advisors or consultants; and debarment or suspension from participation in NSF programs. 45 CFR § 689.3(a)(3).

In determining the severity of the sanction to impose for research misconduct, I have considered the seriousness of the misconduct, and our determination that it was committed knowingly. I have also considered the fact that your misconduct was not an isolated incident. In addition, I have considered other relevant circumstances. 45 CFR § 689.3(b).

After assessing the relevant facts and circumstances of this case, I am imposing the following actions on you:

- For three years from the end of your debarment period, you are required to submit certifications that any proposals or reports you submit to NSF do not contain plagiarized, falsified, or fabricated material.
- From the date of this letter through [REDACTED], 2016, you are prohibited from serving as an NSF reviewer, advisor, or consultant.

All certifications should be submitted in writing to NSF's Office of Inspector General, Associate Inspector General for Investigations, 4201 Wilson Boulevard, Arlington, Virginia 22230.

### Debarment

As referenced previously, NSF is proposing debarment against you based upon a referral from NSF's OIG. In accordance with the OIG's investigative report, you made false statements to NSF and committed financial misconduct.

#### *Regulatory Basis for Debarment*

Pursuant to 2 CFR 180.800, debarment may be imposed for:

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program, such as –

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or

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(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

In any debarment action, the government must establish the cause for debarment by a preponderance of the evidence. 2 CFR 180.850. Your misconduct, as set forth in the OIG's investigative report, supports a cause for debarment under 2 CFR 180.800(b)(3) and (d).

#### *Length of Debarment*

Debarment must be for a period commensurate with the seriousness of the causes upon which an individual's debarment is based. 2 CFR 180.865. Having considered the seriousness of your actions, as well as the relevant aggravating and mitigating factors set forth in 2 CFR 180.860, I am proposing your debarment for three years.

Appeal Procedures for Finding of Research Misconduct and Procedures Governing Proposed Debarment

*Appeal Procedures for Finding of Research Misconduct*

Under NSF's regulations, you have 30 days after receipt of this letter to submit an appeal of this finding, in writing, to the Director of the Foundation. 45 CFR 689.10(a). Any appeal should be addressed to the Director at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. If we do not receive your appeal within the 30-day period, the decision on the finding of research misconduct will become final. For your information, I am attaching a copy of the applicable regulations.

*Procedures Governing Proposed Debarment*

The provisions of 2 CFR Sections 180.800 through 180.885 govern debarment procedures and decision-making. Under NSF regulations, you have 30 days after receipt of this notice to submit, in person or in writing, or through a representative, information and argument in opposition to this debarment. 2 CFR 180.820. Comments submitted within the 30-day period will receive full consideration and may lead to a revision of the recommended disposition. If NSF does not receive a response to this notice within the 30-day period, this debarment will become final. Any response should be addressed to Lawrence Rudolph, General Counsel, National Science Foundation, Office of the General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230. For your information, we are attaching a copy of the Foundation's regulations on non-procurement debarment and FAR Subpart 9.4.

Should you have any questions about the foregoing, please contact [REDACTED], Assistant General Counsel, at (703) 292-5054.

Sincerely,



Fae Korsmo  
Senior Advisor

Enclosures:  
Investigative Report  
Nonprocurement Debarment Regulations  
FAR Regulations  
45 CFR Part 689