

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI

File Number: I91020008

Date: 04 March 2002

Subject: Closeout Memo

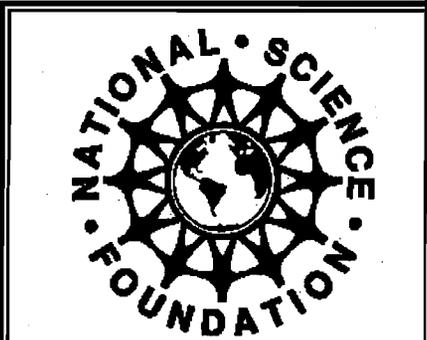
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There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject¹ was allegedly in violation of financial conflict of interests regulations for federal employees. We established that the subject violated 18 USC 208 and the subject resigned on March 21, 1992. This case was closed after declination for prosecution by the Department of Justice.

[REDACTED]

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



NATIONAL SCIENCE FOUNDATION
1800 G STREET, N.W.
WASHINGTON, D.C. 20550



OFFICE OF
INSPECTOR GENERAL

REPORT OF INVESTIGATION

OIG Case Number I91020008

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NATIONAL SCIENCE FOUNDATION
1800 G STREET, N.W.
WASHINGTON, D.C. 20550



**CONFLICT OF INTEREST VIOLATIONS INVOLVING
AN EMPLOYEE OF THE PROJECT MANAGEMENT UNIT**

(Investigation Report—Case No. I91020008)

Basis for Investigation

The Office of Inspector General (OIG) received an anonymous allegation that _____ (the employee), the Head of the Project Management Unit (PMU), Division of Administrative Services (DAS), has influenced contracts in favor of _____

It was alleged that the employee does this because the contractor hires her spouse as a subcontractor. The allegations also claimed that others in _____ were aware of this arrangement and approved of it.

Our initial inquiry disclosed that the contractor was the primary _____ contractor for NSF from Fiscal Year (FY) 1988 through FY 1991. The employee worked as a Project Management Specialist from October 1987 to December 1989, when she became Head of the _____

As a Project Management Specialist and as Head of the Project Management Unit, the employee participated personally and substantially in contracts awarded to the contractor. We also learned that the employee's spouse is a subcontractor for the contractor.

Under authority of the Inspector General Act of 1978, as amended, we investigated possible violations of federal statutes and regulations involving conflict of interest and the procurement process.

Method of Investigation

We reviewed a majority of NSF contracts awarded for [REDACTED] from FY 1987 to the present. We reviewed documents provided by the contractor in response to our subpoena regarding all documents concerning contracts, invoices, and payments to the employee and her spouse. We also conducted interviews with past and present NSF employees involved in the contracting process, with [REDACTED] who have bid on NSF contracts, and with [REDACTED] who have been awarded NSF contracts. The employee was interviewed on three different occasions. The employee's spouse declined to be interviewed.

Background

On June 17, 1974, the employee received a career conditional appointment as a clerk typist (GS-2) for the NSF clerical pool. According to the official personnel file, the employee worked at various clerical positions in the Division of Personnel Management and for the Management Services Branch, until June 1978, when she was promoted to a Management Analyst (GS-7) for the Management Services Branch, which eventually became DAS.¹ In October 1982, the employee married an individual who then worked at NSF as a contract laborer. In October 1986, the employee's spouse resigned from his job as an NSF contract

¹The employee was promoted on July 15, 1979, to a Management Analyst (GS-9) in the Management Services Branch, and on November 30, 1980, to a Management Analyst (GS-11). From June 27 to October 24, 1983, the employee was detailed to the position of Head, Reference and Records Section, DAS. On May 1, 1983, the employee was promoted to the Head, Reference and Records Section, Support Services Supervisor (GS-12). From December 7, 1983, to April 4, 1984, she was detailed to the Office of the Division Director, DAS. On March 31, 1985, she was reassigned to the Planning and Analysis Staff, DAS, as a Program Analyst. On October 11, 1987, the employee was reassigned as a Project Management Specialist in the PMU, DAS.

laborer. On October, 14, 1986, the employee's spouse accepted an appointment as an Industrial Equipment Mechanic with the . The employee held various positions in DAS until October 11, 1987, when she became a Project Management Specialist (GS-12) for the PMU.

As a Project Management Specialist, the employee planned renovation and repair projects and was responsible for ensuring that work was completed to the specifications of NSF contracts. A Project Management Specialist works as the Contracting Officer's Technical Representative (COTR) on small purchases by (a) developing work statements for contracts; (b) requesting that the Procurement Section of DAS award contracts² to responsible contractors for renovation projects; (c) working with contractors to ensure work is performed according to specifications and on schedule; (d) reviewing the work of the contractor; and (e) certifying that the work was satisfactorily completed by the contractors. The employee and other members of the PMU were also responsible for requesting and reviewing the work of contractors who performed work for NSF under a Blanket Purchase Agreement (BPA).³ On December 17, 1989, the employee became Acting Head (GM-13) of the PMU and in June 1991 she was promoted to the Head of

²The Procurement Section of DAS has authority to award small purchase contracts. A small purchase means an acquisition of supplies, nonpersonal services, and construction in the amount of \$25,000 or less. Federal Acquisition Regulations, Title 48 of the Code of Federal Regulations (FAR), subpart 13.1. Only the Division of Grants and Contracts has authority to issue contracts for more than \$25,000.

³A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources. FAR § 13.201(a). A BPA is used to secure supplies or services on a per call basis that do not exceed \$2,500, 10% of the small purchase limitation of \$25,000. FAR §§ 13.101, 13.106. For small purchases that exceed \$2,500, the Contracting Officer (CO) must solicit quotations from generally three sources so that an individual contract can be awarded based on adequate competition. FAR § 13.106. A BPA shall not exceed \$25,000, the dollar limitation for small purchases. FAR § 13.204(b).

the PMU. As Head of the PMU, the employee was responsible for all projects and has administrative approval over all PMU requests for contracts.

The contractor first became an NSF contractor in September, 1986, when the contractor was awarded a BPA in the amount of \$ [REDACTED] for [REDACTED] on [REDACTED] during FY 1987. The contractor has been the primary [REDACTED] for NSF since FY 1988. From FY 1988 through FY 1991, the contractor received over \$253,555 in contracts from NSF.⁵

The employee first worked on an NSF contract with the contractor for [REDACTED] in March 1988. The employee's spouse has worked as a subcontractor for the contractor since June 1988. In response to our subpoena, the contractor provided copies of 30 subcontracting invoices for the employee's spouse and copies of cancelled checks showing that he received \$27,377 from contractor while working as a subcontractor. Between June 1988 and October 1991, the employee's spouse worked as a subcontractor for the contractor on 18 NSF contract actions and was paid at least \$13,703.40 for that work. During this same time period, the contractor received \$ [REDACTED] from 19 contracts from NSF in which the employee participated personally and substantially; her spouse received at least \$6,739.65 from these contracts.

18 U.S.C. § 208 and § 216

Section 208 of title 18 of the United States code, entitled "Acts affecting a personal financial interest," states in pertinent part,

⁴The contract, [REDACTED] was amended twice to a total of [REDACTED]. The contractor was awarded two other contracts during FY 1987 for [REDACTED] and [REDACTED].

⁵The contractor received over [REDACTED] from contracts during FY 1988 and over [REDACTED] during FY 1989.

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or any independent agency of the United States, . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a . . . contract, claim, . . . or other particular matter in which, to his knowledge, he, or his spouse, . . . has a financial interest—

Shall be subject to the penalties set forth section 216 of this title."

Section 216 of title 18, entitled "Penalties and injunctions," states,

"(a) The punishment for an offense under [section 208] of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under [section 208] of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater."

An individual does not have to have a direct or certain financial interest to violate these statutes.

The Supreme Court has explicitly held that an individual will violate the law if he or she participates personally and substantially in a contract when there is "a substantial probability" that the individual (or the individual's spouse) will receive a subcontract.⁶

Evidence generated by this investigation indicates that the employee personally and substantially participated in at least 19 NSF contracts for [REDACTED] that have been awarded to

⁶United States v. [REDACTED], 364 U.S. 520, 555 (1961).

the contractor while knowing that there was a substantial probability that her spouse, as a subcontractor for the contractor, would benefit from these contracts. The employee also personally and substantially participated in eight of those contract actions as a Project Manager or as Head of the PMU, for which her spouse received at least \$6,739.65 as a subcontractor for the contractor. The employee could be liable for criminal and civil penalties under 18 U.S.C. § 208 and § 216 for her participation in these contracts. NSF could also impose administrative sanctions, including termination, against the employee.

Evidence of personal and substantial participation by the employee in eight contracts in which her spouse, who had a financial interest, was paid at least \$6,739.65

1. In June, 1988, the employee, as the Project Manager for a project on the _____ personally called the contractor to authorize the contractor to install _____ for this project under NSF Contract _____, a BPA during FY 1988. The total cost for the carpet installation was _____.⁷ The employee authorized this without seeking the advice or approval of the DAS Contracting Officer (CO). The employee's spouse worked for the contractor on this project as part of a five man moving crew which included two of the employee's brothers.⁸ On June 27, 1988, the contractor paid the employee's brother \$738 for

⁷The cost of this project exceeded the \$2,500 small purchase limit for a BPA. We believe that the employee should have notified the CO of the total cost of this project so the CO could have solicited quotations from three sources and awarded the contract based on the competitive procurement process.

⁸The involvement of the employee's brothers in this contract action is not a violation of Federal Statutes but NSF Manual 15, § 621.21, required the employee to bring the matter to the attention of a conflicts official.

work on the contractor's project.

The contractor submitted to NSF four invoices,

The four invoices were

dated July 21, 1988 and totaled [REDACTED]. On August 3, 1988, the employee signed invoices [REDACTED], which approved payment to the contractor. On September 6, 1988, she signed invoice [REDACTED], which approved payment to the contractor.

2. In August, 1988, the employee, as the Project Manager for the 6th Floor project, personally called the contractor to authorize the contractor to install [REDACTED] for this project under NSF Contract N[REDACTED]. The total cost for the carpet installation was [REDACTED].¹⁰ The employee authorized this without seeking the advice or approval of the CO. On August 23, 1988, the employee signed a memorandum requesting after hours building access for the contractor to install carpet during August 26-28, 1988. The employee's spouse moved furniture on this project for the contractor and was paid \$405. The contractor submitted to NSF four invoices. The four invoices, which totaled \$[REDACTED] were all dated August [REDACTED] 1988. On September 6, 1988, the employee signed the invoices, which approved the payment of the contractor's invoices.

3. On July 21, 1989, the employee's spouse was paid \$445 for moving furniture for the

⁹The \$738 is not added into the total amounts paid to the employee's spouse by the contractor because the contractor paid her brother for this project and we are unable to determine the spouse's portion of this payment.

¹⁰The cost of the carpet installation exceeded the \$2,500 small purchase limit for a BPA. We believe that the employee should have notified the CO of the total cost so an individual contract could have been awarded through the competitive process based on quotations solicited from three sources.

contractor's proje Phase III of the NSF 11th Floor project.¹¹ The 11th Floor project was completed in four phases and the employee's spouse worked on all four phases. In July, the employee became the Project Manager for the 11th floor project because the original Project Manager went on maternity leave. On July 21, she signed the contractor's invoice which approved payment of \$ [REDACTED] to the contractor under NSF Contract No. [REDACTED]

4. On Friday July 21, 1989, the employee sent an electronic mail message that stated that at 7:00 p.m., the contractor would remove all conventional furniture for the last phase of the 11th Floor project and that, after [REDACTED] on Saturday and Sunday, the furniture would be returned. The employee also signed a memorandum requesting after-hours building access for the contractor from July 21 through July 23, 1989. The employee's spouse was paid \$685 for moving furniture on the contractor's project NSF [REDACTED] 11th Floor. On August 10, 1989, the employee signed the contractor invoice [REDACTED] which approved payment of \$ [REDACTED] to the contractor under NSF Contract No. [REDACTED]

5. On August 22, 1989, the employee, the Project Manager for [REDACTED] [REDACTED] signed a Request for Services for a [REDACTED] contract. On September 5, 1989, the CO for DAS awarded NSF Contract [REDACTED] to the contractor for \$ [REDACTED]. The contractor paid the employee's spouse \$2,791.25 for moving furniture on the [REDACTED] project.

¹¹DAS awarded nine small purchase contracts to the contractor totaling \$ [REDACTED] for the 11th floor project. The small purchase limit is \$25,000, and a purchase cannot be broken down into several purchases that are less than the limit merely to permit the use of small purchase procedures. FAR § 13.103(b). We believe DAS improperly awarded these contracts to contractor as small purchases.

¹²The contractor also submitted an invoice [REDACTED] under NSF Contract No. [REDACTED] for \$ [REDACTED] to the attention of the employee. There is no signature approving payment for this invoice.

6. On August 22, 1989, the employee, the Project Manager for the [REDACTED] signed a Request for Services for a [REDACTED] contract. On September 5, 1989, the CO awarded NSF Contract No. [REDACTED] to the contractor for [REDACTED]. The contractor paid the employee's spouse \$1,485 for work on the [REDACTED]. On October 17, 1989, the employee signed the contractor's invoice for [REDACTED], which approved payment for the contractor under NSF Contract No. [REDACTED].

7. On August 24, 1990, the employee, Head of the PMU, signed the Request for Services for tile work on a project in Room 233. On September 24, 1990, the CO awarded NSF Contract No. [REDACTED] to the contractor for [REDACTED]. The contractor paid the employee's spouse \$500 for moving furniture on the Room 233 project.

8. On October 23, the employee, as Head of the PMU, signed a Request for Services for [REDACTED] in Room 339. On October 31, 1991, the CO awarded NSF contract No. [REDACTED] to the contractor for \$[REDACTED]. The contractor paid the employee's spouse \$428.40 for moving furniture on the Room 339 project.

We also identified ten NSF contract actions that the employee's spouse was a subcontractor for the contractor in which we found no evidence that she took official action. From September, 1988 to September 1989, her spouse was paid \$6,963.75 from the contractor for moving furniture on these ten NSF contract actions.

The employee's knowledge of her spouse's financial interest in NSF contracts.

Clearly, a conflict of interest existed involving the employee, an NSF employee who has been personally and substantially involved with NSF contracts, and the contractor, an NSF

contractor that regularly hires the employee's spouse as a subcontractor. Under federal statutes¹³ and NSF regulations¹⁴, the employee was obligated to disclose the conflict to her supervisors and to an agency ethics official. In a sworn statement to OIG on November 1, 1991, the employee stated that she did not realize that there was a conflict of interest and did not think to seek conflicts advice. We believe that she should have identified the conflict in 1988 and should have sought conflicts advice at that time.

The employee originally told us that she did not know how her spouse became a subcontractor for the contractor. During our investigation, we discovered that she was responsible for her husband becoming a subcontractor for the contractor. The Vice President for the contractor¹⁵ told us about an NSF project with which he was involved during June 1988. According to the Vice President for the contractor, the project was to be completed over a weekend but after starting the project on Friday night, it became apparent that the contractor's [REDACTED] were not prepared to move the furniture needed to complete the project. The Vice President for the contractor attempted to obtain professional movers but failed to get any assistance from moving companies over the weekend.

The Vice President for the contractor told us that he notified the employee, the NSF Project Manager, about his problems with the furniture and his inability to obtain professional movers over the weekend. According to the Vice President for the contractor, the employee told him that her spouse worked with a moving crew and gave him a telephone number and a name

¹³18 U.S.C. § 208(b).

¹⁴45 C.F.R. § 681.21.

¹⁵The Vice President for the contractor negotiated the first contract with NSF in September 1986.

to contact for the moving crew. During the December 18, 1991 interview, the employee admitted to us that the phone number was to her mother's house and the name was her brother. The moving crew, which included her spouse and two of her brothers, worked for the contractor over that weekend and helped the contractor complete the NSF project on schedule. Upon completion of the work, the contractor paid the employee's brother as the subcontractor for this project; however, it was decided that her spouse would be the contact person between the contractor and the moving crew for all future projects.

The contractor's documents show that the employee's spouse was first directly paid by the contractor as a subcontractor on July 8, 1988. An invoice from the contractor dated June 30, 1988, shows that he worked for the contractor on a project at the

The Vice President for the contractor told us that he contacted the employee's spouse to work on the project and that the contract representative for the contractor¹⁶ assisted the Vice President with the project. Both the Vice President and the contract representative for the contractor told us that the employee accompanied her spouse to the job site. For this subcontract, the employee's spouse received a check from the contractor for \$261.00. Both the employee and her spouse endorsed this check and she deposited the contractor's check in her NSF Federal Credit Union account on July 12, 1988.¹⁷ When the employee endorsed the check from contractor, she had been a Project Management Specialist for 9 months and had participated in several NSF contract actions

¹⁶The contract representative for the contractor has been the contractor's contract representative for NSF since 1987.

¹⁷All other checks from the contractor to the employee's spouse have been cashed by her spouse.

with the contractor. It is beyond refute that the employee had actual knowledge of the fact that her spouse served as a subcontractor for the contractor on NSF contracts.

The employee's involvement in her spouse's business dealings with the contractor.

We find that the employee's actions indicate that she did not adequately remain separate from her spouse's business dealings with the contractor. Documents and witness statements indicate that she was actively involved in her spouse's business dealings with the contractor.

As described above, in June 1988, the employee accompanied her spouse to the contractor's job site at the [redacted]. The contract representative for the contractor told us that the employee was at the [redacted] job site marking furniture that her spouse and crew were to move as part of the contractor's subcontract.

The employee's name appeared on six internal work invoices from the contractor that were used to pay her spouse as a subcontractor.¹⁸ Four of the six work invoices from the contractor were prepared by the contract representative, for work performed by the employee's spouse and his crew on NSF projects during 1989. A contractor's work invoice for the NSF- [redacted] project, dated February 4, 1989, stated, "Furn. Moving Co. [the employee's spouse and the employee], Moving Furniture, They to be paid \$540."

The next three work invoices from the contractor in which the employee's name appeared all related to the 11th floor project in May and June, 1989. An invoice dated May 27, 1989, stated, "N.S.F. 11th Floor phase I, Movers: [the employee], already set up and scheduled by [the contract representative], Furn. Move \$789." An invoice dated June 10, 1989, stated, "NSF

¹⁸All checks from the contractor were issued to the employee's spouse.

partial phase II & III, 11th Floor, Furn Movers [the employee], already set up & scheduled by [the contract representative], Furn Moving \$1,284." A third invoice, dated June 17, 1989, stated, "NSF 11th Floor Phase 4 Partial, Movers [the employee], Already set up & scheduled by [the contract representative]."¹⁹ During May and June, 1989, the 11th Floor project was handled by another Project Manager. The employee completed the 11th Floor project in July and August, 1989, when the original Project Manager took maternity leave.

The contract representative for the contractor provided a sworn statement to us and said that he could not recall the reasons that he wrote the employee's name on the four invoices for her spouse. The contractor's contract representative added that he had much more contact with the employee than he had with her spouse and assumed that when thinking of the employee's spouse, he also thought of her because he knew they were married. The contract representative told us that he had telephoned the employee at NSF to ask her to locate her spouse about prospective jobs and that he had talked to her about her spouse's work on NSF projects.

The employee's name also appeared on two work invoices from the contractor for subcontracting for a project with the _____ during June 1990. One invoice dated June 16, 1990, stated, "Part Pay [the employee], Move Furniture \$2459.67." The other invoice, dated June 23, 1990, stated, "Part Pay [the employee], Move Furniture \$1790.33." The employee's spouse was paid a total of \$4,250 from the contractor for this subcontract. A former employee for the contractor who worked on the NIC project, told us that the employee accompanied her spouse when her spouse met with the contractor's representatives

¹⁹The employee took over the 11th Floor project in July 1989, and may have provided advice on the project prior to July 1989. Advice is considered participation under 18 U.S.C. § 208.

at the building to review the job site and submit a proposal. The contract representative for the contractor who handled NSF contracts was one of the contractor's representatives that met with the employee and her spouse at the job site. Both the contract representative and the former employee of the contractor told us that the employee assisted and advised her spouse during the job site review.

When questioned about these actions, the employee responded that she saw nothing improper about these actions at that time. We find it inconceivable that the employee, as a GM-13 government official who is actively involved in contract actions with a contractor, would see nothing improper about meeting with that contractor concerning subcontracting for her spouse.

The employee's failure to comply with the Federal Acquisition Regulations regarding NSF contracts awarded to the contractor.

On July 11, 1988,²⁰ while acting as an NSF Project Manager, the employee requested that the Procurement Section of DAS issue two contracts to the contractor for [REDACTED] the Office of the Director (OD). These two contracts, NSF Contract No. [REDACTED] which totalled \$ [REDACTED] were not competed and the contract files do not contain a sole source justification. The only proposal in the two contract files is a proposal from the contractor dated May [REDACTED], 1988. The proposal was signed by the contract representative for the contractor and submitted to the employee. The Contracting Officer for DAS in July 1988, told us that he was first notified of the OD project when he received the requests for services from the employee dated July 11, 1988. According to the Contracting Officer, the contracts were awarded to the

²⁰On July 12, 1988, the first check from the contractor to the employee's spouse, which was endorsed by her, was deposited into the NSF Credit Union.

contractor because he was told by the employee that the work had been scheduled and the OD had been notified of the schedule. When questioned about these contracts, the employee told us that at that time she did not see anything improper about these actions.

Between May and September, 1988, the employee was the Project Manager on six different [REDACTED] projects which exceeded \$2,500 that were completed by contractor under the BPA contract no [REDACTED]. The contractor received \$ [REDACTED] for these six projects that were completed without review or approval by the Contracting Officer for DAS. The employee was the project manager on the first NSF project that her spouse worked for the contractor during June, 1988, and the first NSF Project that her spouse was directly paid as a subcontractor for the contractor during August, 1988. These two projects were completed under NSF Contract [REDACTED] and exceeded the \$2,500 limit for purchases under the BPA.

Several of these projects were broken down into different purchase calls to secure supplies and services from the contractor under the BPA so the cost per purchase call was less than the limit of \$2,500. When these related purchase calls were added together, their total cost exceeded \$2,500. The employee told us that this was acceptable to DAS because the projects were "phased projects" that needed to be completed in phases to avoid displacement of NSF personnel during the renovations.²² A review of the contractor's invoices for the six projects showed that contractor submitted one invoice to NSF for the related purchase calls or submitted several invoices on the same date for the related calls. We believe that the employee should

²¹The employee has been an authorized caller on all BPAs awarded to the contractor since FY 1988.

²²We found examples of phased projects being completed under BPAs only during FY 1988 and FY 1989. The current Contracting Officer for DAS stopped this practice in FY 1990.

have notified the CO of the total cost of each project so that the CO could have solicited quotations from three sources and awarded individual contracts for these projects based on the competitive procurement process.

In addition, we believe with the practice of "splitting" purchase calls under a BPA is improper because the FAR states that a purchase cannot be broken down into several purchases that are less than the limit merely to permit the use of small purchase procedures.²³ Splitting purchase calls for phased projects is a recognized subversion of the small purchase procedures. If projects must be completed in phases, the Contracting Officer should specify in the contracts that the contractor must complete the work in phases over a period of time.

The employee also signed three requests to increase the funds for the BPA with the contractor for FY 1988, contract number [REDACTED]. On July [REDACTED], 1988, she signed a request that the Procurement Section increase [REDACTED] the amount of \$ [REDACTED]. At this time, DAS had already allocated and used \$22,000 on [REDACTED]. The July 22 request caused [REDACTED] exceed the \$25,000 small purchase limit²⁴ by \$17,000. On September 9, 1988, she signed a request that the Procurement Section increase [REDACTED] in the amount of \$ [REDACTED]. On September 13, 1988, she signed a request that the Procurement Section increase [REDACTED] in the amount of [REDACTED] to a total of \$53,534. The total amount for this BPA exceeded the small purchase limit by \$28,534. When questioned about these amendments, the CO stated that he amended the BPA because he was understaffed and he knew that renovation and repair projects were high priority projects in DAS.

²³FAR §§ 13.204(a), 13.103(b).

²⁴FAR §§ 13.103, 13.204.

During September 1988, the employee participated in meetings about the DAS and the renovation projects. The DAS and projects involved the installation of [REDACTED] [REDACTED]. The result of these meetings was that the [REDACTED] costing \$8,026 for the DAS project and \$4,185 for the project, would be completed by the contractor under the contract no.

The employee was the Project Manager on the project and she was substantially involved in the decision to use the contractor for the project. Both the [REDACTED] and DAS projects exceeded the small purchase limit of \$2,500 for purchases under [REDACTED]. The CO should have solicited quotations from at least three sources and awarded individual contracts for each project based on the competitive procurement process.

Inconsistent statements by the employee.

We first interviewed the employee in the early stages of the investigation on November 1, 1991. She provided a sworn statement at that interview. As the investigation continued, we found that the employee's sworn statement was inconsistent with other information that we developed. We again interviewed her on December 4 and December 18, 1991, and she refused to provide sworn statements at these two interviews. In addition, the employee has refused to provide us with substantive corrections and changes to our typed notes of the December 4 and December 18 interviews.

As previously stated, the employee told us that she did not know how her spouse started working for contractor. In the sworn statement, she said, "I don't know how long [my spouse] has worked for [the contractor], but he has been subcontracting for [the contractor] for as long as I can remember." During the December 18 interview, we explained to the employee that we

had learned that in 1988, while working as a Project Manager, she had given the Vice President for the contractor a name and phone number to reach a moving crew and that she told the Vice President for the contractor that her spouse was part of that crew. She responded that the telephone number that she gave was to the NSF contract labor force. We then read the name and telephone number that she provided to the contractor and asked her to identify the name and telephone number. She stated that the phone number was to her mother's house and the name was her brother's name.

In the sworn statement, the employee said, "I tried to distance myself from [her spouse]'s working relationship with [the contractor] and all other contractors that [my spouse] worked for. I assume that he did do some subcontracting through [the contractor] on NSF contracts because of his long term relationship with [the contractor]." During the December 4 interview, we showed the employee all the NSF contracts that she was involved with and the copies of documents showing that her spouse worked as a subcontractor for the contractor on those same contracts. We asked the employee if she knew that her spouse worked on those NSF projects and she replied that she did not know that her spouse worked on those projects. In a sworn statement, the contract representative for the contractor said, "I knew that [the employee] was aware that I was using [her spouse] to move furniture on NSF projects, including projects that [she] was the NSF contract person, because I would mention to [her] that I was using [her spouse] on the projects."

During our interviews, the employee made several statements about her spouse's work history and business as a mover. In the November 1 sworn statement, she stated, "Around October 1987, [my spouse] quit [the NSF contract labor force] to establish working for himself

as a mover. [He] also took a job with the D.C. Government as [an] industrial mechanic. [He] still works during the day for the D.C. Government and moonlights as a mover at night." We learned that the employee's spouse resigned from the NSF contract labor force in October 1986, not October 1987, to accept a position with the D.C. Government. Without interviewing the employee's spouse, we cannot confirm that he resigned from the NSF contract labor force to establish himself as a mover. However, we have learned that on at least five occasions (over weekends) in 1989 and 1990, the employee borrowed a moving dolly for private use from the NSF equipment supply. If her spouse was in the moving business as she has claimed, we do not understand why she would need to borrow a moving dolly over the weekend when her spouse, a professional mover, would have such equipment.

We have questions about other statements that the employee has made about her spouse's business activities as a mover but we have found no independent way to corroborate these statements. We also have no way to determine the extent of the spouse's business dealings with NSF contractors without talking to him. On two occasions we asked the employee if she would ask her spouse if he would agree to be interviewed for this investigation. On December 4 and December 18, 1991, she told us that she had talked to her spouse about being interviewed for this investigation and that he refused to be interviewed. When we contacted the employee's spouse directly, he told us that she had not previously told him that we wanted to interview him. The employee's spouse agreed to be interviewed on January 13, 1992, at 9:30 a.m. He did not appear for the interview and later stated that he wanted to seek legal advice before he talked to us. On January 15, 1992, he telephoned us and declined to be interviewed for this investigation.

In her sworn statement, the employee stated, "I did not realize that there was a conflict

of interest and did not think to seek conflicts advice. No one in DAS or in NSF suggested to me to seek conflicts of interest advice when I got married or as I gained more responsibility through promotions." We cannot accept this explanation because it was her responsibility to identify the conflict and to seek advice. She did not notify her supervisors or a conflicts official that her spouse was a subcontractor for an NSF contractor. In addition, in April 1990, the employee was identified by the DAS conflicts officer as an individual who should attend the NSF Conflict of Interest (COI) briefing. The employee was one of 15 DAS employees who was sent notice of the COI briefing by electronic mail. According to the employee, she did not attend that briefing.

We find it difficult to believe that the employee did not identify the conflict of interest in 1988. By June 1988, she had held various administrative positions in DAS for 10 years, including a position as the Special Assistant to the Director of DAS. We think that during that time the employee would have been exposed to COI issues. Even if we accept that she did not identify the conflict immediately, we find that her inability to identify the conflict over a four year period to be unacceptable. We find this position even more unacceptable when considering that since December, 1989, the employee has been acting as a supervisor and Head of the PMU. As the Head of PMU, she receives copies of all distributed COI notices.

Findings concerning the allegations that others in DAS were aware that the employee's spouse worked as a subcontractor for the contractor and approved of this arrangement

In addition to the employee, we interviewed 12 past and present employees of DAS who were involved with the contract actions and renovation projects. Two former Project Management Specialists stated that they heard from a former employee of contractor that the

employee's spouse worked for the contractor as a subcontractor, but stated that they had never seen him work on an NSF project and had no direct knowledge that he actually was a subcontractor for the contractor. Both of these former Project Managers said that they did not notify DAS or NSF management that they heard the employee's spouse worked for an NSF contractor. We interviewed the employee's immediate supervisor. The supervisor was the Head of the PMU when the employee was a Project Management Specialist and is currently Head of the Facilities Management Section. He told us that he was aware that the employee's spouse was in the hauling/moving business but he did not know that the employee's spouse worked for the contractor or any other NSF contractor. The supervisor said that he had not witnessed the employee show any favoritism toward the contractor or any other contractor.

We failed to identify any NSF employee who was involved in these contracts and renovation projects and who had direct knowledge that the employee's spouse worked as a subcontractor on NSF contracts. Therefore, we have found no information to support the allegation that others in DAS had knowledge of this and supported it.

Moreover, the employee told us that she did not advise her supervisor or anyone else in DAS about her spouse's business dealings with the contractor. We believe that the employee's failure to inform her supervisor, or allow anyone else in DAS to even discover this essential fact, explains how her spouse had been able to work on 18 different NSF projects for the contractor between 1988 and 1991 without any NSF employee knowing about it.

Conclusion

Based on our investigation, we concluded that the employee engaged in conduct that constituted violation of 18 U.S.C. § 208. While acting in an official capacity as a Project

Management Specialist for the PMU, the employee was responsible for her spouse becoming a subcontractor for a contractor who was regularly awarded contracts from NSF. She knew that her spouse was a subcontractor for the contractor since June 1988. While knowing that her spouse was a subcontractor for the contractor, she intended to participate and did participate personally and substantially in at least 19 contracts with the contractor in which there was substantial probability that her spouse would benefit financially. The employee failed in her obligation to identify the conflict of interest and seek appropriate conflicts advice.

On February 13, 1992, we referred our draft investigation report regarding this matter to the U.S. Attorney's Office. While this matter was under evaluation by the U. S. Attorney's Office, the employee resigned, effective March, 21, 1992. On March 23, 1992, the U.S. Attorney's Office declined criminal prosecution "due to mitigating circumstances, most importantly limited prosecutorial resources." On March 30, 1992, the U.S. Attorney's Office declined civil prosecution. This matter is hereby closed.

Date: March 31, 1992