

**Responses To Comments on Section 4.2.2.2 Management Fee of the *NSF Large Facilities Manual***

Organization & Topic	Comment	Resolution
<b>Association of Universities for Research in Astronomy, Inc. (AURA)</b>		
Management Fee to Nonprofit vs For-profit Organizations	For-profit institutions may be awarded up to 15% profit on R&D work or 10% on other work. The less than 1% average management fee for non-profits presents a substantial challenge in remaining competitive with such other entities which have many diverse sources of income and typically much more reserve funding. Elimination of management fees, or sharp limitation on the flexibility for using them exacerbates this inherent competitive disparity.	The policy has been revised to apply to all entity types. Therefore, fee to for-profits would not be considered on a different scale than for non-profits. NSF also plans to clarify this fee/profit limitation with a sentence in solicitations stating the specific limitations of our fee policy.
Negotiations per Agreement	NSF should consider a fee proposal for each cooperative agreement and enter into negotiations that best suit that agreement and the managing organization's needs. When an organization has more than one operation receiving a management fee, the fee should be negotiated based on the organization's overall needs.	For purposes of consistency and transparency, a standard management fee policy is necessary. Each management fee is individually negotiated using the basic principles outlined in the policy.
Accounting for Uses of Management Fee over Past Five Years	Since there was no requirement to segregate or justify the use of these funds in the past, the organization would likely not be able to fully comply with the new requirement.	NSF recognizes that it would be challenging to an organization to retroactively impose this record keeping requirement. As such, the language has been clarified by insertion of the term "available" to address such issues. A new sentence also has been added to address inclusion of an award term for all new awards subject to this requirement.
<b>Associated Universities, Inc. (AUI)</b>		
Management Fee to Nonprofit vs For-profit Organizations	For-profit organizations may request up to 10-15% fee and have multiple sources of income - further limitations on fee will exacerbate an existing competitive distortion.	For purposes of consistency and transparency, a standard management fee policy is necessary. Each management fee is individually negotiated using the basic principles outlined in the policy.
Accounting for Uses of Management Fee over Past Five Years	Since there was no requirement to segregate or justify the use of these funds in the past, the organization would likely not be able to fully comply with the new requirement.	NSF recognizes that it would be challenging to an organization to retroactively impose this record keeping requirement. As such, the language has been clarified by insertion of the term "available" to address such issues. A new sentence also has been added to address inclusion of an award term for all new awards subject to this requirement.

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Charitable Contributions	Charitable contributions should be excluded from the list of expenses NSF regards as not benefiting the agency. AUI has made donations to organizations promoting diversity and broadening participation in science and technology, which is an example of social responsibility that brings concrete benefits to NSF.	Charitable contributions was removed from the prohibited use list after consideration of the public comments. Rather than prohibit all such contributions, NSF would consider whether there is an appropriate direct or indirect benefit to the funded activity.
Relationship between Fee Amounts and Budgets	Management fee expenses do not neatly scale with the expenses incurred in the cooperative agreements, either when project budgets rise or fall, or when project scope changes. AUI urges caution about assuming a precise, linear relationship between appropriate management fee level and overall funding.	Noted.
Risk vs Cost	OMB Circular A-123 includes introductory language that there be an "appropriate balance between the strengths of controls and the relative risk" and that "the benefits of controls should outweigh the cost." Based on this, NSF should take into consideration the small amount of management fee and controls already in place.	NSF has considered the relative risk in development of this policy.
<b>Incorporated Research Institutions for Seismology (IRIS Consortium)</b>		
Recipient Discretion	IRIS prefers NSF continue to provide management fees that are at the sole discretion of the receiving organization. Without the management fee they may not be able to compete with organizations with greater resources.	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate.
Management Fee to Nonprofit vs For-profit Organizations	For-profit organizations may request up to 10-15% fee and have multiple sources of income - further limitations on fee will exacerbate an existing competitive distortion.	The policy has been revised to apply to all entity types. Therefore, fee to for-profits would not be considered on a different scale than for non-profits. NSF also plans to clarify this fee/profit limitation with a sentence in solicitations stating the specific limitations of our fee policy.
Clarity on Benefits to NSF	While the proposed policy is clear on what expenses do not benefit NSF, it isn't clear on what does. This ambiguity should be removed.	Language has been clarified to refer to benefiting the NSF-funded activity.
Current vs New	What is the impact on proposed new policy on existing awards?	The policy will be applied to all new and continuing awards. The award term will clearly specify the expected use of the fee as well as the requirement for record keeping purposes going forward.

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Retention of Funds	If management fees received during an award are not expended by the end of the award, would the recipient be allowed to retain funds to build its reserves? Would unexpended management fee funds be seen by NSF as a basis for not continuing or reducing future management fee amounts?	Awardees will be permitted to retain non-expended fees to build a reserve. With respect to whether an unexpended fee would lead to stopping or decreasing fee, NSF believes that such response would be fact-specific and dependent on the justification provided.
impact on Review	How would fee proposals and organization's historical use of management fees impact reviews of competitive proposals? Will NSF communicate its assessment of fee proposals to awardees with the criteria and basis for its decision?	For purposes of negotiating a fee, information available on actual uses of management fee previously awarded by NSF in the preceding five-year period under any award shall be included in the proposing organization's fee proposal.
New Administrative Burden	With the new policy it appears NSF is shifting towards treating management fee as a type of reimbursable cost. The implication that NSF will perform periodic reviews of management fee usage under an award and the need to report on actual uses of management fee creates a new set of ambiguous standards for a category of unallowable expenses that fall outside the federal cost principles, and introduces an increased administrative burden and new risk to NSF and the awardee.	Noted.
Public Availability	Will fees be publicly shared?	NSF does not typically release fee information publicly.
<b>UNAVCO Board of Directors (Penn State University)</b>		
Management Fee to Nonprofit Organizations	<p>Unallowable costs for which management fee has been used includes bank fees, interest costs, cost-sharing on proposals, continuing operations in case of delayed awards, government shutdowns or other disruptions, starting new science, education and diversity programs, etc. Nonprofit management entities have also used private funds, of which management fees have been a part, to cover modest entertainment, food, and beverage costs for its volunteer unpaid advisory committees, Board of Directors and scientific workshop participants. These are vital in supporting community interactions and development of collaborative professional relationships.</p> <p>Urge NSF to return to the practice of awarding management fees without restrictions or specific guidelines about their use. Such decisions should be left to the judgement of the awardee. In the rare event that an awardee misuse the fee, NSF should address the specific issue with the awardee with appropriate actions specific to the occasion.</p>	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate.
Acceptable Use of Management Fee	To imply that fees must be "allowable" contradicts the fundamental principle that fees may cover all unallowable costs without restriction by the agency.	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate.

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Calculated Management Fee Should be Separate from Consideration of Other Sources of Income	Requiring any entity to provide its proprietary business information to NSF to justify the payment of fees violates most procurement standards.	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate.
<b>Universities Space Research Association (USRA)</b>		
Management Fee to Nonprofit Organizations	<p>USRA concurs with the seven considerations for providing a management fee that were recently added to the Large Facilities Manual.</p> <p>Organizational considerations for providing a management fee include 1) assuming management and performance risks, 2) litigation risk, 3) self-initiated activities such as research, education and outreach, 4) managing Government funding shortfalls, 5) interest payments on bank loans, 6) attracting and retaining professional staff and 7) relocation expenses for employees.</p> <p>Operational considerations which impact the nonprofit's ability to function effectively include 1) self initiated activities such as research, education and outreach, 2) managing government funding shortfalls, and 3) interest payments on bank loans.</p> <p>Program considerations which impact the ability of the nonprofit function effectively include 1) attracting and retaining professional staff, and 2) relocation expenses for employees.</p>	Noted.
Management and Operations Contracts	<p>NSF should use Management and Operations (M&amp;O) contracts under FAR 17.6 for the Operation of Major Facilities. The type of work necessary to construct and operate NSF large facilities is more aligned with M&amp;O contracts than cooperative agreements.</p> <p>Use of an M&amp;O contract would appropriately shift risk to the nonprofit operator. The contract can be structured to share risk and incentivize the nonprofit operator, for instance by structuring the fee with an award fee component.</p> <p>NSF could structure M&amp;O contracts to meet its needs for operating large facilities including; provision of fee in a way to support NSF goals, recognition of significant NSF involvement in labor relations, integrated involvement in management controls and purchasing processes, etc.</p> <p>USRA believes M&amp;O contracts provide an improved funding method over cooperative agreements.</p>	NSF's choice of cooperative agreements for these efforts is supported by the Federal Grant and Cooperation Agreement Act. The purpose of the awards are to carry out a public purpose of support or stimulation, rather than acquiring a direct benefit to NSF.
Management Fee Calculation	NSF should use a structured analysis for determining appropriate management fee, assigning values for each identified factor used to determine management fee. Factors for calculating the fee should include 1) performance risks, 2) financial risk including working capital adjustment, and 3) other considerations.	NSF determined categories of appropriate uses in the policy and recognizes the need to maintain some flexibility to negotiate fees on a case-by-case basis.

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Calculated Management Fee Should be Separate from Consideration of Other Sources of Income	The calculated management fee should be separate from consideration of how previous fee was allocated. Requiring information on how management fee is being used by an awardee is inconsistent with the purpose of management fee and violates the intent of OMB guidelines, which expressly excludes fee from the cost principles and from government oversight and direction.	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate. It also should be noted that the reporting/review of fee use is commensurate with DOD's practice for its FFRDCs.
Calculated Management Fee Should be Separate from Consideration of How Previous Fee was Allocated	<p>USRA recommends NSF analyze the appropriate management fee for each award considering the risk and other considerations for that specific operation. A structured fee should be used to ensure all relevant considerations are included and analyzed.</p> <p>NSF should not be involved in other activities of the nonprofit organization and should not be involved in reviewing management decisions on how to use the organizations institutional resources.</p> <p>Use of a nonprofit organization's institutional resources is properly within the province of the nonprofit's management and Board.</p>	NSF determined categories of appropriate uses in the policy and recognizes the need to maintain some flexibility to negotiate fees on a case-by-case basis.
<b>University Corporation for Atmospheric Research (UCAR)</b>		
Justification, Award and Use of Management Fee	<p>Fees are viewed by the government as discretionary funds, and once awarded, OMB treats those funds as belonging to the recipient. Therefore, awardees are not required to submit to an accounting of the fee.</p> <p>The policy should not include a list of exclusionary items, as this is inconsistent with the Uniform Guidance and the FAR. Implying that fees must be "allowable" is inconsistent with cost and audit principles.</p> <p>Recommend removal of any requirement by NSF of review of an awardee's "other sources of income" beyond what is already made available by nonprofit organizations through existing audits, provision of annual audited financial statements, annual audited reports under the Uniform Guidance and IRS Form 990 filings.</p> <p>Recommend NSF establish percentage guidelines for the amount of fee to provide certainty to the awardee and any competitors during an RFP process.</p>	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate. It also should be noted that the reporting/review of fee use is commensurate with DOD's practice for its FFRDCs.
Scrutiny of Awarded Management Fee	UCAR is concerned with the approach of review or audit of the use of management fees since the management fees are not auditable.	NSF has determined that a management fee policy, which includes restrictions on types of cost, and imposes use requirements is appropriate. It also should be noted that the reporting/review of fee use is commensurate with DOD's practice for its FFRDCs.

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Acceptable Use of Management Fee	<p>The examples of acceptable use contained in the draft policy are restrictive and do not recognize appropriate uses such as investments in new programs, initiatives and strategic hiring, or new business processes.</p> <p>The draft policy does not address the use of fee to account for cost of money and to support cash flow.</p>	<p>Examples are not meant to be exhaustive, as stated in the policy. These issues will be reviewed during assessment of the fee proposal.</p>