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114TH CONGRESS
2D SESSION

H. R. 5049

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2016

Mr. LOUDERMILK (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

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A BILL

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "NSF Major Research Facility Reform Act of 2016".

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term ''Director'' means the Director of the Foundation.

(2) FOUNDATION.—The term ''Foundation'' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILITIES.

(a) LARGE FACILITIES OFFICE.—The Director shall maintain a Large Facilities Office. The functions of the Large Facilities Office shall be to support the research directorates in the development, implementation, and assessment of major multi-user research facilities, including by—

(1) serving as the Foundation's primary resource for all policy or process issues related to the development and implementation of major multi-user research facilities;

(2) serving as a Foundation-wide resource on project management, including providing expert assistance on nonscientific and nontechnical aspects of project planning, budgeting, implementation, management, and oversight;

(3) coordinating and collaborating with research directorates to share best management practices and lessons learned from prior projects; and

(4) assessing projects during preconstruction and construction phases for cost and schedule risk.

(b) OVERSIGHT OF LARGE FACILITIES.—The Director shall appoint a senior agency official whose primary responsibility is oversight of major multi-user research facilities. The duties of this official shall include—

(1) oversight of the development, construction, and operation of major multi-user research facilities across the Foundation;

(2) serving as a liaison to the National Science Board for approval and oversight of major multi-user research facilities; and

(3) periodically reviewing and updating as necessary Foundation policies and guidelines for the development and construction of major multi-user research facilities.

(c) POLICIES FOR LARGE FACILITY COSTS.—

(1) IN GENERAL.—The Director shall ensure that the Foundation's polices for developing and maintaining major multi-user research facility construction costs are consistent with the best practices described in the March 2009 Government Account-

ability Office Report GAO–09–3SP, or any successor report thereto, and the Uniform Guidance in 2 CFR part 200.

(2) COST PROPOSAL AUDITS.—

(A) GENERAL REQUIREMENT.—The Director shall ensure that a cost proposal audit is conducted on any project with a total project cost over $100,000,000, in accordance with Government Auditing Standards as established in Government Accountability Office Report GAO–12–331G, or any successor report thereto.

(B) RESOLUTION OF ISSUES FOUND.—The Director, or a senior agency official within the Office of the Director designated by the Director, shall certify in writing that all issues identified by the auditor, including any finding of unjustified or questionable costs items, are resolved before the Foundation may execute a construction agreement with respect to the audited project.

(C) TRANSMITTAL TO CONGRESS.—The Director shall transmit each certification made under subparagraph (B) to the Committee on Science, Space, and Technology of the House of

Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate.

(3) INCURRED COST AUDITS.—The Director shall ensure that an incurred cost audit is conducted at least biennially on any project with a total project cost over $100,000,000, in accordance with Government Auditing Standards as established in Government Accountability Office Report GAO–12–331G, or any successor report thereto, with the first incurred cost audit to commence no later than 12 months after execution of the construction agreement.

(4) CONTINGENCIES.—

(A) IN GENERAL.—Except as provided for in subparagraph (C)(ii), the Foundation shall—

(i) manage contingency in accordance with Cost Principles Uniform Guidance in 2 CFR part 200.433, or any successor thereto, except as provided in this paragraph; and

(ii) not make any award which provides for contributions to a contingency reserve held or managed by the awardee.

(B) UPDATING POLICY MANUAL.—The Foundation shall update its NSF Grant Policy Manual and any other applicable guidance for contingencies on major multi-user research facilities with regard to estimating, monitoring, and accounting for contingency expenditures.

(C) FOUNDATION REQUIREMENTS.—The policy updated under subparagraph (B) shall require that the Foundation—

(i) may only include contingency amounts in an award in accordance with Cost Principles Uniform Guidance in 2 CFR part 200.433, or any successor thereto; and

(ii) shall retain control over funds budgeted for contingency reserve, but may disburse budgeted contingency funds incrementally to the awardee to ensure project stability and continuity.

(D) AWARDEE REQUIREMENTS.—The policy updated under subparagraph (B) shall require that an awardee shall—

(i) provide verifiable cost data for any amounts proposed for contingencies;

(ii) support requests for the release of contingency funds with evidence of a bona fide need and verifiable cost data to establish that the amounts sought are reasonable, allocable, and allowable; and

(iii) record and report all contingency expenditures to the Foundation.

(E) CURRENT AWARDEES.—The Foundation shall work with awardees for whom awards with contingency provisions have been made before the date of enactment of this Act—

(i) to determine if any of their use of contingency funds represents out-of-scope changes for which Foundation's prior written approval was not obtained; and

(ii) if out-of-scope changes are found, to identify any financial action that may be appropriate.

(5) MANAGEMENT FEES.—

(A) DEFINITION.—In this paragraph, the term ''management fee'' means a portion of an award made by the Foundation for the purpose of covering ordinary and legitimate business ex-

penses necessary to maintain operational stability which are not otherwise allowable under Cost Principles Uniform Guidance in 2 CFR part 200, Subpart E, or any successor regulation thereto.

(B) LIMITATION.—The Foundation may provide management fees under an award only if the awardee has demonstrated that it has limited or no other financial resources available for covering the expenses for which the management fees are sought.

(C) FINANCIAL INFORMATION.—The Foundation shall require award applicants to provide income and financial information covering a period of no less than 3 prior years (or in the case of an entity established less than 3 years prior to the entity's application date, the period beginning on the date of establishment and ending on the application date), including cash on hand and net asset information, in support of a request for management fees. The Foundation shall also require awardees to report to the Foundation annually any sources of non-Federal funds received in excess of $50,000 during the award period.

(D) EXPENSE REPORTING.—The Foundation shall require awardees to track and report to the Foundation annually all expenses reimbursed or otherwise paid for with management fee funds, in accordance with Federal accounting practices as established in Government Accountability Office Report GAO–12–331G, or any successor report thereto.

(E) AUDITS.—The Inspector General of the Foundation may audit any Foundation award for compliance with this paragraph.

(F) PROHIBITED USES.—An awardee may not use management fees for—

(i) costs allowable under Cost Principles Uniform Guidance in 2 CFR part 200, Subpart E, or any successor regulation thereto;

(ii) alcoholic beverages;

(iii) tickets to concerts, sporting, or other entertainment events;

(iv) vacation or other travel for non-business purposes;

(v) charitable contributions, except for a charitable contribution of direct benefit

to the project or activity supported by the management fee;

(vi) social or sporting club memberships;

(vii) meals or entertainment for non-business purposes;

(viii) luxury or personal items;

(ix) lobbying, as described in the Uniform Guidance at 2 CFR 200.450; or

(x) any other purpose the Foundation determines is inappropriate.

(G) REVIEW.—The Foundation shall review management fee usage for each Foundation award on at least an annual basis for compliance with this paragraph and the Foundation's Large Facilities Manual.

(6) REPORT.—Not later than 12 months after the date of enactment of this Act, the Director shall submit to Congress a report describing the Foundation's policies for developing and managing major multi-user research facility construction costs, including a description of any aspects of the policies that diverge from the best practices recommended in Government Accountability Office Report GAO–09–

3SP, or any successor report thereto, and the Uniform Guidance in 2 CFR part 200.

SEC. 4. WHISTLEBLOWER EDUCATION.

(a) IN GENERAL.—The Foundation shall be subject to section 4712 of title 41, United States Code.

(b) EDUCATION AND TRAINING.—The Foundation shall provide education and training for Foundation managers and staff on the requirements of such section 4712, and provide information on such section to all awardees, contractors, and employees of such awardees and contractors.

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