

OPENING STATEMENT

Ranking Member Eddie Bernice Johnson (D-TX)
Committee on Science, Space, and Technology

"Review of the Results of Two Audits of the National Ecological Observatory Network"
Full Committee Hearing

December 3, 2014

Mr. Chairman, I have to confess that I am baffled by today's full committee hearing. There may be legitimate policy and management issues for this Committee to consider, but this particular hearing, at this time, is in my opinion premature, incomplete, and lacks balance. Therefore it is impossible to have a full discussion on **any** of the legitimate oversight issues that we could examine.

As I'm sure you're aware, Inspector General Lerner and NSF's Director Dr. Córdova have initiated reviews of NSF's policies and oversight of management fees, and those reviews are not yet complete. NSF is also investigating spending specific to NEON, and that is also underway. Today the most we will hear is some preliminary observations from IG Lerner and Ms. Bales that NSF should consider tightening up its policies with respect to management fees.

Perhaps the agency should do just that, but the October 2014 DCAA audit report being reviewed today was not made available to NSF until 2 weeks ago, and it made no mention of management fees. So while a discussion was had at the staff level about inviting NSF, there was agreement that it was too late to reasonably expect the agency to prepare testimony for this hearing, and at the same time premature for the reasons I already described.

If we had postponed this hearing until next year, as my staff urged your staff to do, we might have included NSF on this panel to present their own findings and plans with respect to management fees.

We will also hear testimony from the witnesses about contingency fees. NSF senior management and IG Lerner have been at an impasse on the use and management of contingency fees for construction projects for 4 years. Both had the opportunity to share their views before this Committee at a 2012 hearing.

Since that time, OMB has updated its own guidance on contingencies. As my staff understand the updated regulation, some of the specific areas of dispute, such as how contingency expenditures are tracked, should now be settled. There are other areas of dispute, such as how the contingency fund is managed, that remain open to debate among reasonable people.

That is a key point. For these particular policy issues, there is no clear right or wrong. So how do we expect to have any meaningful discussion about these disputes today without the agency at the table to present and defend its own positions?

Mr. Chairman, I ask unanimous consent to submit for the record a 2013 memo from NSF's Chief Financial Officer that provides detailed justifications for the agency's current policies. However, a document for the record does not make this a balanced and complete hearing.

Finally, Mr. Chairman, it is with some reluctance that I offer the following observation. DCAA, the Defense Contract Audit Agency, was established to audit DOD contracts subject to the defense acquisition regulation.

I am concerned that they simply do not have sufficient staff with the expertise or experience to appropriately audit NSF's grants and cooperative agreements. My staff has heard from several entities audited by DCAA on behalf of the IG that the auditors repeatedly asked for the wrong documentation and made significant errors in their assessment of information. Further, auditors repeatedly failed to work with the audited entity in a transparent way that would have resolved significant costs that were later questioned in publicly available documents, including in the IG's semi-annual reports. Having heard common complaints from several unrelated entities, I am unwilling to attach too much weight to any adverse findings by DCAA without further review.

Unfortunately, problems with DCAA's audits have caused significant and ongoing tension between the IG and NSF management for several years, and have put credible NSF awardees unnecessarily at risk. These problems also color today's hearing.

Ms. Bales, please do not take my comments as a personal criticism. I am just concerned that the auditing organization's skills fit the job when we are rendering judgments about the proper use of federal funds and questioning the performance of world-class research institutions and organizations.

Mr. Chairman, I want to join you in conducting legitimate oversight of the National Science Foundation. But for the reasons I have mentioned, I don't think that will be possible at today's hearing.

With that I yield back.