



Highlights of [GAO-09-789](#), a report to congressional committees

Why GAO Did This Study

The America COMPETES Act gave the National Institute of Standards and Technology (NIST), within the Department of Commerce, the authority, through 2010, to obtain the temporary services of up to 200 experts or consultants per year, but did not specify how the agency should acquire these services. NIST has used this authority to award personal services contracts to obtain the services of individuals.

The act requires GAO to report on whether additional safeguards would be needed if NIST's authority were to be made permanent. To meet that requirement, GAO determined (1) the extent to which NIST has used its authority; (2) how effective the authority has been in helping NIST meet its need for experts; and (3) the extent to which NIST has provided appropriate safeguards over its use, and what additional safeguards are needed. GAO reviewed statutes, regulations, federal guidance, and NIST's contracts. In addition, GAO interviewed officials at NIST, Commerce, and the Office of Personnel Management (OPM).

What GAO Recommends

If the Congress extends or makes the COMPETES Act authority permanent, it may want to consider clarifying how NIST is to obtain the services of experts. In commenting on a draft of this report, Commerce and NIST concurred with GAO's conclusions, and OPM provided technical comments, which were incorporated as appropriate.

View [GAO-09-789](#) or [key components](#). For more information, contact Anu Mittal at (202) 512-3841 or mittala@gao.gov.

AMERICA COMPETES ACT

NIST Applied Some Safeguards in Obtaining Expert Services, but Additional Direction from Congress Is Needed

What GAO Found

From August 2007 through April 2009, NIST had awarded 39 contracts totaling about \$1.9 million using the COMPETES Act authority. Work under 16 of these contracts has been completed, 1 was canceled prior to being funded, and work on 22 is ongoing. Four of NIST's seven laboratories awarded 32 of the 38 funded contracts. Award amounts averaged \$50,754. Award amounts covered the costs of labor hours and, in 9 cases, the costs of travel. No contract exceeded 1 year in duration, and the number of hours purchased averaged 939 hours per contract. In general, the experts designed and conducted experiments, analyzed data, and delivered their results in peer-reviewed reports. These experts also assisted with research projects, such as a study of the lighting sources and the materials used for traffic signs and road markings.

According to NIST officials, the COMPETES Act authority, despite limitations, has been highly effective in helping NIST meet its need for experts. These officials told GAO that the authority allows NIST to award personal services contracts that enable the agency to quickly redirect research as needed. The officials also stated that the authority allows NIST to respond to the short-term research needs of other agencies that do not merit NIST hiring new staff. Most of these officials value the authority because they interpret it as allowing NIST to award contracts without competition, which helps them to quickly select individuals with specialized expertise. Nonetheless, some officials said the authority limits the amount of pay that can be offered, which may prevent NIST from contracting with the most highly qualified experts; although none of these officials could provide an example of when this had occurred. Also, because NIST has strictly applied the 1-year limit in the authority, NIST officials said they are limited in their ability to retain experts, even if the experts are still needed. If the authority is not made permanent, NIST officials said they will have to revert to the use of nonpersonal services contracts, which they believe are less effective in meeting the agency's needs because they require time-consuming contract modifications to redirect research and limit NIST's ability to select specific experts to do the work.

NIST has developed procedures that include safeguards for using the authority, but it had difficulty determining which specific laws and regulations to apply because it did not receive clear guidance from Commerce or OPM. As a result, to help limit the risk to the agency, NIST adopted some safeguards from the *Federal Acquisition Regulation* (FAR) that apply to contracts and some from OPM's regulations that implement personnel statutes. For example, NIST awarded the contracts at a firm fixed price, a FAR safeguard, and limited the pay offered to experts, a safeguard in the personnel statute. Neither the COMPETES Act nor a second law incorporated in the act clearly state whether NIST is required to use its new authority by appointing individuals as federal employees in accordance with OPM regulations or by awarding personal services contracts in accordance with the FAR. Because the question of which safeguards NIST is legally required to apply is unsettled, the need for any additional safeguards is also unclear at this time.