



# NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

## Oversight Activities of NIST's Recovery Act Construction Grant Awards Are Generally Effective but Need Improvements

FINAL REPORT NO. OIG-12-020-A  
FEBRUARY 14, 2012

U.S. Department of Commerce  
Office of Inspector General  
Office of Audit and Evaluation

**FOR PUBLIC RELEASE**





February 14, 2012

**MEMORANDUM FOR:** Dr. Patrick Gallagher  
Under Secretary of Commerce for Standards and Technology  
National Institute of Standards and Technology

**FROM:** Ann C. Eilers   
Principal Assistant Inspector General for Audit and Evaluation

**SUBJECT:** Oversight Activities of NIST's Recovery Act Construction Grant  
Awards Are Generally Effective but Need Improvements  
*Final Report No. OIG-12-020-A*

We are providing our final audit report on the effectiveness of NIST's oversight and activities to manage American Recovery and Reinvestment Act (Recovery Act) awards given through the NIST construction grant program. Our audit objectives were to (1) determine the adequacy of policies and procedures developed for Recovery Act construction awards; (2) determine whether NIST has the personnel, processes, and systems in place to monitor the program; (3) assess the adequacy of monitoring activities; and (4) determine whether the construction projects have proceeded according to their original proposals.

Although NIST has established its construction grant program, improvements are necessary. We found that policies, procedures, and monitoring activities, while generally effective, need strengthening. Specifically, we found inadequate internal controls led to awards administration and oversight concerns, construction projects in jeopardy of not being completed on time, and noncompliance with Recovery Act provisions such as the Buy American Act.

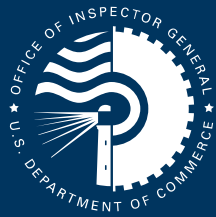
We have received your response to our draft report. Where appropriate, we have modified this final report based on this response and discussions with NIST subsequent to the issuance of the draft report. The formal NIST response is included as appendix C. (We summarized your response, and OIG comments, starting on page 17.) The final report will be posted on the OIG's website pursuant to section 8L of the Inspector General Act of 1978, as amended.

In accordance with the Department Administrative Order 213-5, within 60 days of the date of this memorandum, please provide us with an action plan that responds to all of the report recommendations.

We would like to express our thanks to your staff for the courtesies shown to us during our review. Please direct any inquiries regarding this report to Johnny Dawsey, Auditor Manager, at (404) 730-2056, or Rebecca Leng, Senior Advisor, at (202) 482-8294, and refer to the report title in all correspondence.

Attachment

cc: Rachel Kinney, Audit Liaison, NIST  
David Robinson, Associate Director for Management Resources, NIST  
Michael Herman, Executive Officer for Administration, NIST  
George E. Jenkins, Chief Financial Officer, NIST  
Stella S. Fiotes, Chief Facilities Management Officer, NIST  
Usha Ganti, Chief, Grants and Agreements Management Division, NIST



# Report In Brief

FEBRUARY 14, 2012

## Background

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) appropriated \$360 million to NIST to construct research facilities, including \$180 million in competitive grants for the construction of research science buildings.

NIST's competitive grants program would award up to \$60 million to unfunded meritorious projects proposed under a fiscal year (FY) 2008 competition and the remaining \$120 million based on a new competition. By January 2010, NIST awarded more than \$179 million in Recovery Act funds to support the construction of new research science facilities at 15 universities and 1 nonprofit research organization.

With grant recipients' matching shares, the 16 projects were intended to launch more than \$400 million in new laboratory construction projects in 2009 and 2010.

## Why We Did This Review

Since the announcement of Recovery Act funds appropriation, OIG has provided oversight of NIST administration of the construction grants program, including a October 2009 flash report that offered recommendations for the pre-award phase. This review focuses on post-award administration.

The objectives of this audit were to (1) determine the adequacy of the policies and procedures developed for Recovery Act construction awards; (2) determine whether NIST has the personnel, processes, and systems in place to monitor the program; (3) assess the adequacy of monitoring activities; and (4) determine whether the construction projects have proceeded according to their original proposals.

## NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

### Oversight Activities of NIST's Recovery Act Construction Grant Awards Are Generally Effective but Need Improvements

OIG-12-020-A

#### WHAT WE FOUND

After awarding its first Recovery Act grants more than 2 years ago, NIST has established a generally effective construction grants program. Nevertheless, program processes are still under development—and NIST risks not having appropriate and adequate monitoring processes in place. Monitoring challenges that we found include:

*Inadequate Controls Lead to Deficiencies in Award Administration.* We detail how grant funds were released improperly (without securing the government's interest), financial and technical reports were missing from official files, and prior audit reports were not consistently reviewed per the Single Audit Act.

*Construction Projects Are in Jeopardy of Not Being Completed on Time.* Projects selected for review have not met Recovery Act objectives (including recent instructions to agencies to accelerate Recovery Act fund spending with final payments completed by September 30, 2013, unless granted an OMB waiver). Five projects (totaling \$67 million in Recovery Act awards) may continue past the OMB deadline—and require immediate management attention. Also, NIST granted project time extensions without essential documentation, such as a statement of no anticipated further delay and feasibility of project completion within a revised time schedule.

*Lack of Program Guidelines and Incomplete Program Office Oversight Policies and Procedures Exist.* The NIST program office's construction grants procedures manual addresses some key areas but lacks financial and scientific review procedures. Also, NIST lacks a recipient program guidelines handbook.

*Noncompliance with the Buy American Act, and Other Recovery Act Rules, Presents Issues.* We noted compliance issues that arose with reprieves granted to use non-U.S.-made devices without an official Buy American waiver—as well as the restriction agencies must follow to spend Recovery Act funds only on Recovery Act-related work.

#### WHAT WE RECOMMEND

Our recommendations to the Under Secretary of Commerce for Standards and Technology are that he direct:

- The NIST grants office to address federal fund drawdown issues, as well as the review and reconciliation of all required reports in official grant files.
- The NIST program office to (a) develop plans to address projects at risk of missing the September 30, 2013, deadline; (b) require other grantees to meet grant-specified deadlines and/or submit proper extension requests to NIST; and (c) require grantees to submit all extension request elements before finalizing its decisions.
- The program office to strengthen its construction grants procedures manual and develop a recipient handbook—as well as direct the grants office to instruct staff on the official role of the paper file used with their grants management system as it transitions to a new grants system (and strengthen internal controls on official file access).
- The program office to ensure Buy American compliance—and direct the grants office to establish a firewall to prevent the use of Recovery Act funds (should they become available) on non-Recovery Act activities.

# Contents

<b>Introduction</b> .....	<b>1</b>
<b>Findings and Recommendations</b> .....	<b>3</b>
<b>I. Inadequate Controls Lead to Deficiencies in Award Administration</b> .....	<b>3</b>
A. Grant Funds Were Released Improperly, Without Securing the Government’s Interest.....	3
B. Financial and Technical Reports Were Missing.....	4
C. Prior Audit Reports Were Not Consistently Reviewed .....	5
<b>II. Construction Projects Are in Jeopardy of Not Being Completed on Time</b> .....	<b>6</b>
A. Projects Selected Did Not Meet All Recovery Act Objectives .....	6
B. Project Time Extensions Were Granted Without Essential Documentation .....	10
<b>III. Lack of Program Guidelines and Incomplete Program Office Oversight Policies and Procedures Exist</b> .....	<b>11</b>
A. NIST Must Strengthen Program Office Policies and Procedures Manual to Ensure Proper Financial and Scientific Reviews .....	12
B. NIST Needs to Develop a Recipient Program Guidelines Handbook.....	13
C. NIST Grants Office Should Improve Procedures for Maintaining Official Award Files .....	13
<b>IV. Noncompliance with the Buy American Act, and Other Recovery Act Rules, Presents Issues</b> .....	<b>15</b>
A. Compliance Issues Arose with the Buy American Act .....	15
B. Other Compliance Issues Emerged with the Recovery Act.....	16
<b>Summary of Agency and OIG Comments</b> .....	<b>17</b>
<b>Appendix A: Objectives, Scope, and Methodology</b> .....	<b>20</b>
<b>Appendix B: Recipient Information</b> .....	<b>22</b>
<b>Appendix C: Agency Response</b> .....	<b>23</b>

*COVER: Detail of fisheries pediment,  
U.S. Department of Commerce headquarters,  
by sculptor James Earle Fraser, 1934*

## Introduction

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009<sup>1</sup> (the Recovery Act) into law. The Recovery Act appropriated \$360 million to NIST to construct research facilities, including—as announced in the June 1, 2009, *Federal Register*—\$180 million in competitive grants for the construction of research science buildings.<sup>2</sup>

With Office of Management and Budget (OMB) agreement, NIST's competitive grants program would award up to \$60 million to unfunded meritorious proposals for “shovel-ready”<sup>3</sup> projects submitted under a previous competition held in fiscal year (FY) 2008 and the remaining \$120 million based on a new competition. On July 20, 2009, and January 8, 2010, NIST awarded more than \$179 million in Recovery Act funds to support the construction of new research science facilities at 15 universities and 1 nonprofit research organization (see appendix B).

Ultimately, the research targets range from offshore wind power, aquaculture, and marine ecology to physics research and nanotechnology. With grant recipients' matching shares, the 16 projects were intended to launch more than \$400 million in new laboratory construction projects in 2009 and 2010.

Since the announcement of Recovery Act funds appropriation, OIG has provided oversight of NIST administration of the construction grants program, including the October 2009 flash report *NIST Construction Grants and NOAA Habitat Restoration Grants Are Competitively Awarded but Improvements Are Recommended for NIST's Selection Documentation, NOAA's Management of Applicant Risk, and Commerce's Pre-Award Guidance on Background Checks (ARR-19841)*. For the pre-award phase of construction grants administration, OIG recommended that NIST improve its documentation of the evaluation board selection process to ensure clear documentation of its financial assistance decisions.

### **Monitoring Challenges Facing NIST**

To implement this program, NIST used the NIST Construction Grant Program (NCGP) to manage all pre-award competition activities. The Grants and Agreements Management Division (GAMD, or grants office) and the Office of Facilities and Property Management (OFPM, or program office) are responsible for all post-award grants administration, program monitoring, and oversight responsibilities. The grants office is part of the Office of Financial Resource Management and handles the administration of grants at NIST.

Currently, OFPM provides oversight of 24 construction grant projects, 16 funded by the Recovery Act and 8 funded by annual appropriations. OFPM is staffed with a federal program officer (FPO) and contract support staff experienced in construction and engineering.

---

<sup>1</sup> Pub. L. No. 111-5.

<sup>2</sup> 74 Fed. Reg. 26213. Prior to the Recovery Act, only 3 awards totaling \$30 million had been made under this construction grant program in FY 2008.

<sup>3</sup> NIST created a questionnaire (OMB Control No. 0693-0054) for the initial round of Recovery Act funding with the following first question: “Is the proposed project in your proposal ‘shovel ready’ consistent with the Recovery Act objectives? If yes, explain.”

Additionally, the program office created specific guidance documents to assist recipients with Recovery Act requirements (e.g., ARRA Supplemental Buy American Guidance for NIST Construction Grants, Clarifying Guidance for NIST ARRA Construction Grant Reporting). See table I for some of the oversight responsibilities attributed to the program and grants office.

**Table I. Grants Office and Program Office Oversight Responsibilities<sup>a</sup>**

Oversight Responsibilities	Grants Office	Program Office
Maintain official award files	✓	
Ensure recipient compliance with award conditions	✓	
Receive and review recipient financial reports	✓	
Review and approve or disapprove no-cost amendments, including time extensions	✓	
Provide programmatic guidance/technical assistance to recipients		✓
Establish programmatic policy		✓
Review financial and performance or technical reports for consistency with the approved project		✓
Monitor project activities to ensure project goal achievement		✓

Source: OIG, data obtained from the Department of Commerce (DOC) *Grants Manual*

<sup>a</sup> A checked box indicates the respective responsibility is with that office.

After awarding the first Recovery Act grants more than 2 years ago, NIST's program processes are still under development. NIST risks not having appropriate and adequate monitoring processes in place. Monitoring challenges include the program's complex operational aspects, management of a significant contractor role in program implementation, and the need to include Recovery Act requirements in existing program and administration processes.

### **Audit Objectives**

The objectives of this audit were to (1) determine the adequacy of the policies and procedures developed for Recovery Act construction awards; (2) determine whether NIST has the personnel, processes, and systems in place to monitor the program; (3) assess the adequacy of monitoring activities; and (4) determine whether the construction projects have proceeded according to their original proposals.

See appendix A for details regarding our audit objectives, scope, and methodology.

# Findings and Recommendations

## I. Inadequate Controls Lead to Deficiencies in Award Administration

Effective grant monitoring decreases the risk of unauthorized expenditures and, consequently, the risk of fraud. Our review highlighted problems in the award implementation phase that could be improved, including:

- ensuring funds are not released prior to securing the government’s interest in real property,
- requiring the timely receipt and review of financial and technical reports, and
- using independent audit reports to help determine financial status and compliance with government requirements.

### A. *Grant Funds Were Released Improperly, Without Securing the Government’s Interest*

Grant awards have conditions that require specific actions for complying with the grant award—or, in some cases, limit or prohibit other actions until the recipient meets the award condition. According to *NIST Construction Grant Program General Terms and Conditions*, one condition is that Recovery Act construction grant recipients need to execute a security interest in the real property; NIST will release no grant funds until recipients have complied with this provision, unless other arrangements satisfactory to NIST are made. The security interest document “Covenant of Purpose, Use and Ownership” requires that recipients:

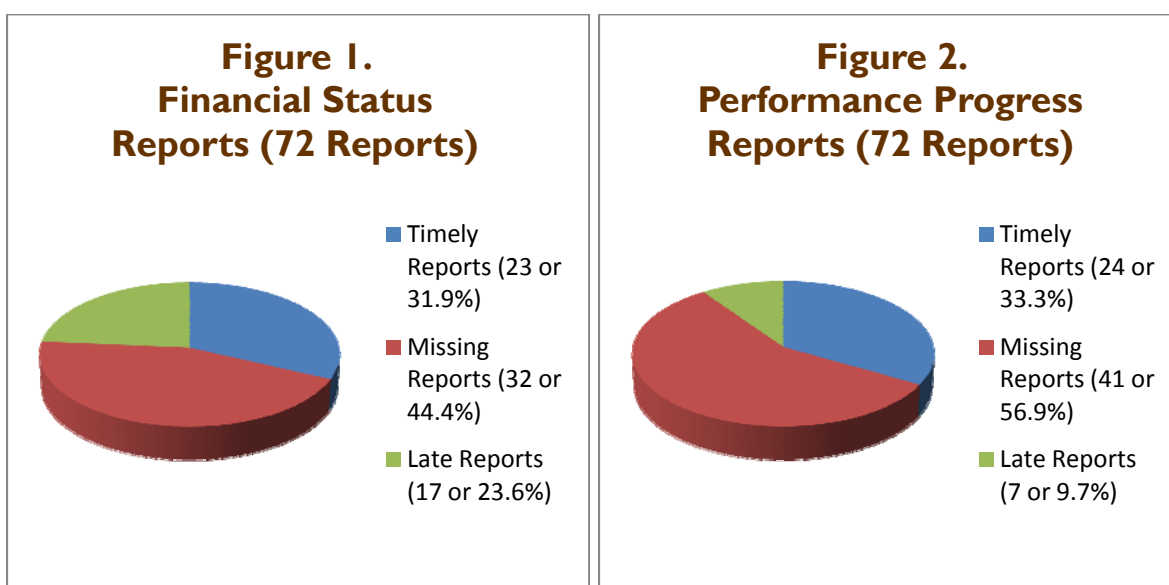
1. not sell, transfer, convey, or mortgage any interest in the real property acquired or improved with funds made available through the award for the estimated useful life of the project without prior written approval of NIST (20 years);
2. not use the property for purposes other than the project purposes without the prior written approval of NIST; and
3. compensate the federal government for its interest in the property in the event the recipient uses the property for any other purposes—or sells, leases, transfers, conveys, or mortgages it without the prior written approval of NIST.

During our file review, we noted that 2 of the 16 recipients were able to draw down federal funds—a total of \$135,124 for one recipient and \$114,443 for the other—without security interests (or other arrangements) in place. While both the grants and program offices were aware of the release of grant funds without an executed security interest, they did not stop recipients from drawing down funds or revoke recipient access to their funds disbursement account. After we informed the NIST program and grants offices, they took action to remedy these violations. Without adequate oversight of these important grants requirements, recipients would have access to their award funds without securing the government’s interest in those assets.



### B. Financial and Technical Reports Were Missing

NIST special award conditions (SAC) require recipients to submit financial and performance reports to the program officer and the grants officer on or before the tenth calendar day after the end of each quarter. Financial reports are reviewed, among other reasons, to ensure that recipients are expending funds at an appropriate rate and matching requirements are being met. Performance reports are reviewed for consistency with the approved project. We reviewed the official file for the inclusion of these reports for the first six quarters of the grant period. Out of 72<sup>4</sup> financial status reports due, 32 (44 percent) were missing from the official file and 17 (24 percent) were submitted late (up to nearly 4 months). Out of 72 performance progress reports due, 41 (57 percent) were missing from the official file and 7 (10 percent) were submitted late (up to nearly 5 months; see figures 1 and 2, below).



Source: OIG, from official NIST grant files

Additionally, we found that the Automated Standard Application for Payments (ASAP)<sup>5</sup> withdrawals were not always verified against the financial status reports within 45 days of receipt as required by NIST Standard Operating Procedure 05-02. Out of the above-mentioned reports, 40 (55.6 percent) were not verified at all, and 4 (5.6 percent) were not verified within 45 days of receipt.

Not having the required reports in the official files hampers NIST's oversight efforts—especially its ability to determine whether recipients are performing according to plan or accountable for their spending.

<sup>4</sup> Four 2009 awards and twelve 2010 awards required 6 and 4 quarterly financial status reports respectively. The same reporting requirement applies to performance progress reports. In total, the official file should have contained 72 financial reports and 72 performance progress reports.

<sup>5</sup> ASAP allows grantee organizations receiving federal funds to draw from accounts pre-authorized by federal agencies.

We were informed by the NIST Grants Division Chief that high staff turnover and change in management have likely caused this lack of oversight. Subsequent to our meeting on August 15, 2011, NIST informed us that it has received and reviewed all but three performance progress reports—and received and reviewed all financial status reports.

### *C. Prior Audit Reports Were Not Consistently Reviewed*

All grant recipients are subject to the Single Audit Act,<sup>6</sup> which requires independent review of the recipient's financial management, internal controls, and compliance with laws and regulations. During the pre-award phase, the Grants Management Information System (GMIS) Pre-Award Checklist Guideline requires the grants specialist to review the recipient's most recent single audit report to determine the financial status of the company, as well as its compliance history of managing federal funds. The grants specialist repeats the single audit reviews, as part of the checklist, when the recipient requests funded or no-cost actions. An example of a no-cost action is an amendment for a time extension without any additional cost to the government. A funded action is the obligating of additional federal funds to an existing project.

We noted that the files did not always contain information that a single audit review was performed and when it was performed. Out of 16 official award files, 3 did not contain single audit reports, and 2 grant files only had a single audit report from FY 2001 (although the grant was awarded in 2010 and more recent single audit reports were available.) According to NIST, GAMD does not have the staffing resources needed to perform all necessary single audit reviews. Inadequate reviews of recipient single audits may result in overlooking important findings adversely affecting recipients' ability to manage government funding. For example, in one instance, the single audit found that a recipient had deficiencies related to tracking equipment and cost transfers, but that single audit was not in the official award file.

### *Recommendations*

We recommend that the Under Secretary of Commerce for Standards and Technology direct the NIST Grants Chief to:

1. strengthen internal controls to ensure that all appropriate award conditions are met before NIST allows the drawdown of federal funds;
2. develop adequate internal controls with regard to establishing review and reconciliation of all required reports in official grant files; and
3. ensure that (a) the most current single audit reports are reviewed, (b) the review is documented by the grants specialist, and (c) the report and review are kept in the official file to help determine financial status and compliance with government requirements.

---

<sup>6</sup> 31 U.S.C. §§ 7501-7507.

## II. Construction Projects Are in Jeopardy of Not Being Completed on Time

### A. Projects Selected Did Not Meet All Recovery Act Objectives

According to the objectives of the Recovery Act, projects undertaken through its program were intended to result in the preservation of jobs and the promotion of economic recovery—and be commenced as quickly as possible, while ensuring prudent management. To attain this goal, NIST would select projects that were ready to proceed or “shovel ready.” In fact, to emphasize the original intent of the Recovery Act, OMB recently instructed grant-giving agencies (unless granted a waiver by OMB) to accelerate the spending of Recovery Act funds with final payments completed by September 30, 2013.<sup>7</sup> We found that NIST construction grants funded by the Recovery Act are at risk of not meeting the Act’s objectives.

The construction grant funding, as announced in the *Federal Register*, called for selection factors for use when vetting applications; the announcement highlighted that:

- NIST would consider the degree to which the applicant (1) proposes an early construction start date and/or (2) is close to (or has awarded) a construction contract for the facility. For example, an early start date for construction of a ready-to-proceed project may be considered more favorably than a project that requires a longer time to complete design requirements.
- Projects that are ready to proceed are generally those for which (1) feasibility studies and other baseline information required for a design to commence are completed; (2) required consultations and permits are, if not in hand, either in progress or there is reasonable assurance provided that they can be attained quickly; and (3) National Environmental Policy Act (NEPA) or equivalent analysis and any environmental permits and authorizations are finished, or can be expeditiously completed, so that projects can be implemented shortly after funding is made available.
- NIST would emphasize the selection of projects that are ready to proceed and will thereby stimulate the local economies through the creation or retention of jobs in U.S. jurisdictions, as well as yield significant program benefits.

After selection, the awards are managed by the program office and the grants office. The program office—tasked with monitoring project activities to ensure goal achievement—maintains a NIST construction grants project master schedule, which tracks project scheduling such as design and construction periods, along with additional tasks. The schedule requires monitoring and continuous updates to reflect the accurate status of grant projects. The grants office maintains the official file that has the award documents indicating the grant’s beginning and end periods which includes grant period extensions.

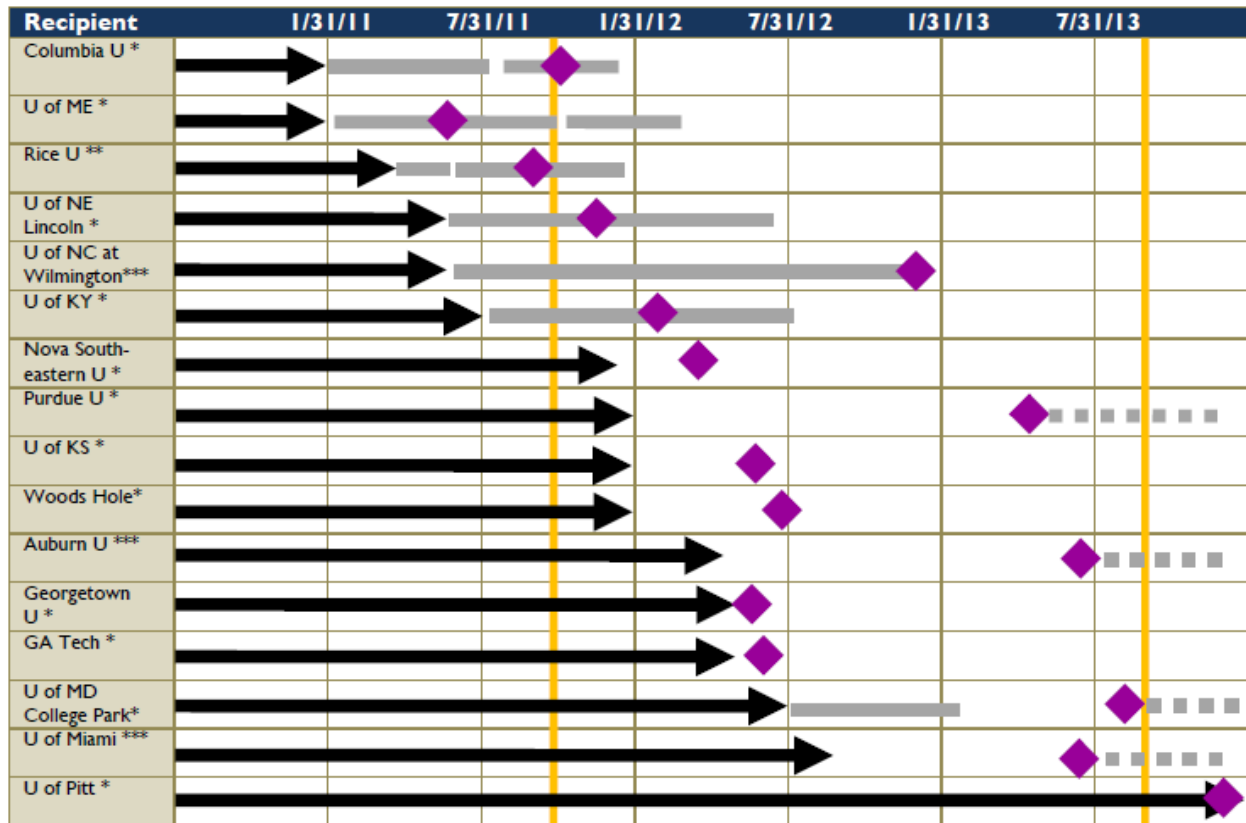
---

<sup>7</sup> On September 15, 2011, OMB issued M-11-34, *Accelerating Spending of Remaining Funds from the American Recovery and Reinvestment Act for Discretionary Grant Programs*, directing federal agencies to accelerate spending “consistent with existing laws and regulations and programmatic objectives. If those funds have not been spent by September 30, 2013, agencies shall reclaim them to the extent permitted by law” (see page 2 of OMB M-11-34).

The projects selected have not yielded the results intended by the selection factors in order to meet the objectives of the Recovery Act. Projects have required extensions and spending levels are low.

Of the 16 awards, 4 started in August and September of 2009; the remaining awards started in February 2010. At the time the awards were granted, most had initial award end dates before mid-2012, with only 1 award (University of Pittsburgh) scheduled to end past September 30, 2013 (see figure 3).

**Figure 3. Award Completion Timeframes**



Source: OIG, based on NIST data.

\* 12 awards started 2/2010; \*\* 1 award started 8/2009; \*\*\* 3 awards started 9/2009;

➔ original award end date; — extension; - - multiple extensions;

◆ construction phase end date, based on master schedule; ■ ■ ■ ■ construction/administrative closeout period;

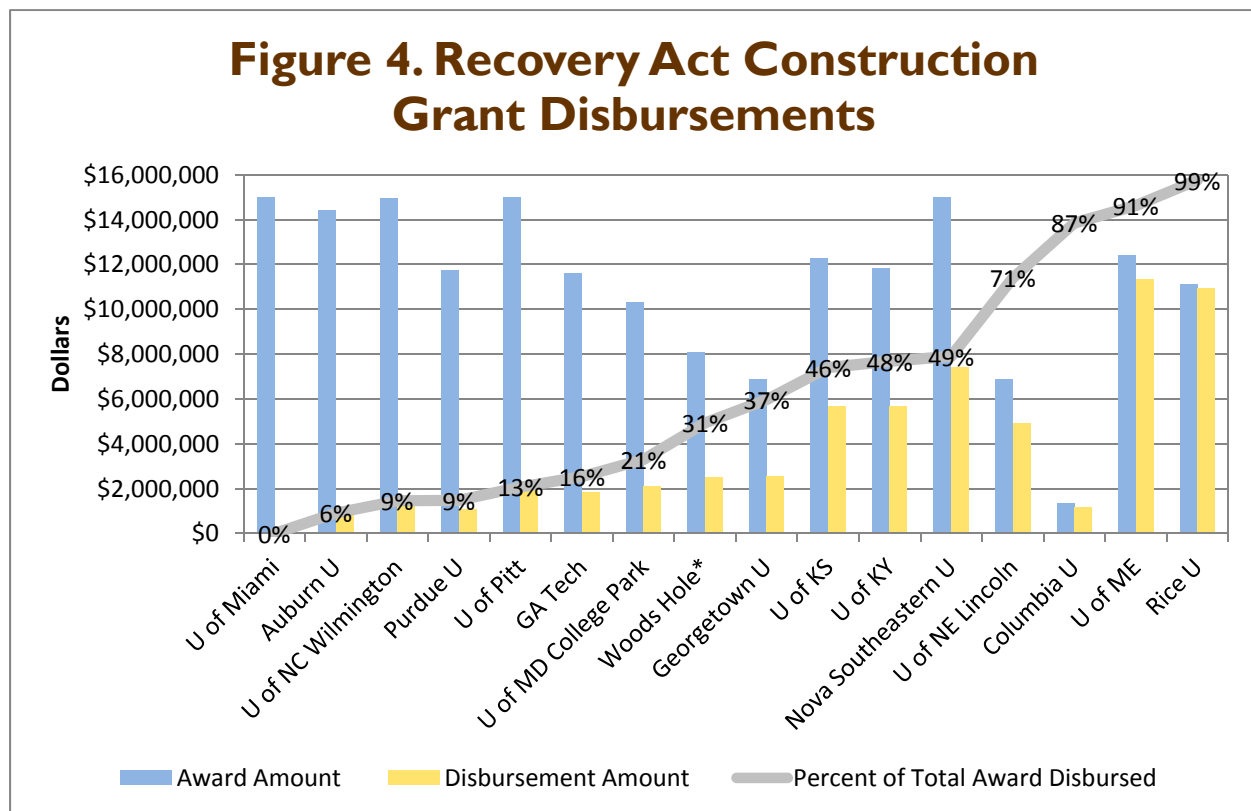
|| (first line) when OIG obtained data (10/31/2011); || (second line) OMB deadline for spending (9/30/2013).

We compared the dates on official award documents (7 awards have approved extensions) with the dates that the master schedule indicated for end of construction. We concluded that, considering required construction days in light of current grant end dates, extensions may become necessary for the remaining 9 awards. For example, according to official grant documents, Nova Southeastern University, Purdue University, University of Kansas, and Woods Hole Oceanographic Institute have grant end dates by January 2012. However, according to NIST’s October 31, 2011, master schedule, these grantees will not complete the construction phase of the grant until March 2012, April 2013, June 2012, and July 2012, respectively.

Also, in addition to University of Pittsburgh, at least 4 projects—Purdue University, Auburn University, University of Maryland, and University of Miami (which originally had grant end dates before OMB’s deadline)—may continue past the September 30, 2013, deadline (specified in OMB M-11-34) when construction and closeout periods are factored in. These 5 projects total \$67 million in Recovery Act grant awards.

We noted that most delays were not due to unforeseen external conditions such as weather, existing site conditions, or material or labor delays. Instead, valuable time has been lost in part because of administrative issues; to execute security interests; to fulfill NEPA requirements; or to facilitate design agreements. According to NIST, recipients were awarded fixed price-contracts to carry out the projects. Nonetheless, schedule delays may increase costs, which are an issue in today’s constrained budget environment.

These project delays have contributed to slow spending. As of October 31, 2011, only half of the recipients have drawn down more than one-third of their respective federal funds (see figure 4 for grant disbursements).



Source: OIG, based on federal Automated Standard Application for Payments (ASAP) drawdowns. Disbursements are as of October 31, 2011; \* Woods Hole Oceanographic Institute (nonprofit organization)

When projects show indications of delays not pertaining to external factors, NIST should determine whether obstacles are preventing the Recovery Act projects from achieving timely completion. NIST should place more emphasis on these projects’ on-time completion, requiring recipients to devise an action plan for reducing the impact of identified delay risks—and recovering baseline schedule estimates contained in the grant agreement to the maximum extent possible—in order to hold projects to Recovery Act objectives.

### B. Project Time Extensions Were Granted Without Essential Documentation

The Department of Commerce (DOC) *Grants Manual*, Chapter 17 (Construction Awards), G.I, states that the recipient should submit to the FPO timely written extension requests (which “must ordinarily” be submitted at least 30 days prior to the award end date), which should contain certain elements (see table 2 below, which covers the seven extension requests as of August 2011). After review, the FPO recommends to the grants officer whether to amend the grant award with a new end date. A total of seven recipients requested and received amendments to extend their awards’ end dates (see figure 3 on page 8). Some extension requests were not timely; in fact, one of these recipients filed its written request 4 days after the initial award end date. None of the extension requests contained all the elements, such as a statement of no anticipated further delay and feasibility of project completion within a revised time schedule. While the FPO is aware of the project status as a result of recurring meetings with award recipients, those recipients should submit extension requests with all elements.

**Table 2. Extension Requests Compliant with Department of Commerce (DOC) Grants Manual**

Element	Recipient 1 <sup>a</sup>	Recipient 2 <sup>a</sup>	Recipient 3 <sup>a</sup>	Recipient 4 <sup>a</sup>	Recipient 5 <sup>a</sup>	Recipient 6 <sup>a</sup>	Recipient 7 <sup>a</sup>
Explanation of the recipient’s inability to complete work by the specified date	✓	✓	✓	✓	✓	✓	✓
Statement that no other project changes are under consideration	—	—	—	—	—	—	—
Budget for the remaining funds	—	—	—	—	—	—	—
Documentation of a continued bona fide need for the project	—	—	—	—	—	—	—
Statement of no anticipated further delay and feasibility of project completion within revised time schedule	—	—	—	—	✓	—	—

Source: OIG

<sup>a</sup> A checked field indicates the respective element was present in the recipient’s extension request.

The *NIST Construction Grants Monitoring & Oversight Procedures* manual does not provide any guidance on the approval of time extensions for the construction projects. According to NIST, the failure to timely process extension requests was an administrative oversight; the agency stated it will explore the legality of backdating and retroactive approvals that were granted. NIST further stated that administrative practices have been instituted by the program office and the grants office to ensure that these procedural violations do not occur in the future.

The granting of extensions as a result of non-external factors should be rare. The program office providing oversight should ensure that risks are mitigated and these projects are completed on time.

### *Recommendations*

We recommend that the Under Secretary of Commerce for Standards and Technology direct the NIST program office to:

1. develop plans to accelerate the time schedule for the five projects either (a) scheduled for completion after or (b) at risk of being extended beyond September 30, 2013;
2. require grantees of the remaining projects to accelerate construction work to meet the deadlines as specified in grant documents—or submit extension requests for NIST review; and
3. require recipients to submit all elements in their extension request before making a decision to recommend or deny the request—as well as include extension guidance in the procedures manual.

### **III. Lack of Program Guidelines and Incomplete Program Office Oversight Policies and Procedures Exist**

GAO's Standards for Internal Control state that "all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation requirements should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained."<sup>8</sup> NIST provided OIG the relevant program office procedures manual—compiled 30 months after the first construction grant award (non-Recovery Act) and 22 months after the first Recovery Act grant award. As this was a new program, NIST has had to develop and document procedures while managing 24 awards. According to the FPO, NIST has emphasized running the program, with not enough time devoted to the full development of written policies.

Our review of the *NIST Construction Grants Monitoring & Oversight Procedures* manual determined that it addresses some of the requirements necessary for the successful implementation of the construction grants program. However, it is lacking in key areas, including program office procedures for financial and scientific reviews. Further, NIST should develop a recipient program guidelines handbook. Finally, NIST's grants office should improve procedures for maintaining official award files.

---

<sup>8</sup> U.S. General Accounting Office, November 1999. *Standards for Internal Control in the Federal Government*, AIMD-00-21.3.1. Washington, DC: GAO, 15.



A. *NIST Must Strengthen Program Office Policies and Procedures Manual to Ensure Proper Financial and Scientific Reviews*

*Financial review procedures.* Currently the program office employs oversight procedures including recurring meetings via conference call (usually at 5-week intervals), a fraud training session, and site visits. According to the *NIST Construction Grants Monitoring & Oversight Procedures* manual, site visits can occur at multiple times during the award implementation phase of the grant (the FPO holds an in-person kick off meeting after the grant is awarded). These early site visits have been deemed an effective way to catch potential construction problems, according to best practices identified by the Department of Justice in its February 2009 *Improving the Grants Management Process*.<sup>9</sup> While site visit guidance includes various reviews, the NIST manual underemphasizes the analysis of financial records.

For example, there is little mention of the FPO's role to ensure that the recipient maintains accurate accounting records and adequate support for its expenditures. During two of our four site visits, we requested that the recipient show us how the accounting records were used to prepare the expenditures on the financial status reports. In both instances, the recipient was not able to provide us the link between the approved budget's spending categories and its accounting records while we were onsite. Each recipient ultimately sent us the required documentation but, with financial reports already filed with NIST, it should have been readily available. Requesting this type of financial documentation should be a standard oversight practice to ensure that recipients are not overdrawing funds and are providing the proper matching share.

Currently, NIST relies on single audits (which, as we note in this report's first finding, NIST inconsistently tracks and reviews) to monitor financial records. Recipients are not required to submit their annual single audit report until 9 months after the end of the organization's fiscal year—allowing recipients to have receipt of federal funds for up to 21<sup>10</sup> unaudited months. About \$60 million has been disbursed as of October 31, 2011, with approximately \$120 million of federal funds yet to be received by recipients. It is essential for program officers to know, beyond single audit reports, how recipients expend these federal funds—which support projects complex in scope and design and involving large costs, multiple vendors, and many specific building requirements (see figure 3 on page 8 for total awards and disbursements). Robust site visits can provide timely assurance of effective Recovery Act spending, by incorporating review of financial reporting and other compliance requirements as part of the overall monitoring plan.

*Postaward scientific review procedures.* The *Federal Register* announcement stated that the scientific and technical merit of the proposed use of the facility is to be used as a grant proposal evaluation criterion. This entails scientists—familiar with the research related to the construction project's purpose—rating the project proposal during the selection process. After this initial step, there are no more required scientific reviews. NIST policies

---

<sup>9</sup> U.S. Department of Justice Office of Inspector General, February 2009. *Improving the Grant Management Process*, 4–5.

<sup>10</sup> The 21 months depends upon the recipient receiving award funds in the first month of the fiscal year—12 months in the fiscal year plus 9 months until the report is due.

and procedures do not include a formalized scientific review at later project phases; further, the construction grant program office has experts on construction but not on the science itself.

The FPO stated that scientists are consulted when there is a need; however, we found there is no requirement for including scientists in subsequent reviews. Such scientific reviews were done inconsistently. For example: during the implementation phase, the program officer described consulting a NIST scientist when a grant recipient selected a deionizing water system for its project. In another example, when the recipient had a concern about interference with its labs' vibration isolation systems, the project did not consult with a NIST scientist. The *NIST Construction Grants Monitoring & Oversight Procedures* manual should describe key indicators that would trigger a scientific review during the implementation phase to ensure consistent operations.

Without full understanding by the FPO of the technologies relevant to the construction site, recipients may alter projects from their original proposals. With established documented procedures for scientist consultation, NIST would ensure that projects progress according to plan and project scopes remain unaltered in order to achieve the goals as intended.

#### *B. NIST Needs to Develop a Recipient Program Guidelines Handbook*

NIST's policies and procedures do not include a recipient handbook for the construction grants program. Although recipients can find grants criteria within the award terms, a handbook would clarify requirements during the grant's implementation stage, preventing a misinterpretation of regulations and ensuring that recipients are following policies consistently.

The Department of Commerce (DOC) *Grants Manual* states that the program office is responsible for providing recipients with programmatic guidance and technical assistance. In addition to showing a PowerPoint presentation covering many of the grant's administrative and reporting requirements, the NIST FPO provides an in-person review with an overview and discussion of all award provisions, conditions, and terms—as well as technical, administrative, and reporting requirements—at the kickoff meeting for each Recovery Act grant recipient. However, these do not provide the detail often needed by recipients; they do not provide a reference tool in the way a detailed handbook would. For example, there are no details provided regarding the extension request elements. Not having adequate policies and procedures in place to manage this program will adversely affect NIST's oversight capabilities.

#### *C. NIST Grants Office Should Improve Procedures for Maintaining Official Award Files*

*Electronic grants management system.* We found that NIST no longer uses GMIS as the official grants file, which is once again a paper file. According to NIST officials, it was necessary to revert to paper because GMIS was no longer receiving the necessary upgrades. The grants officer stated that the paper file is the official file of record. Commerce, in the process of requiring all grants offices to use a Department-wide grants management system, is considering a management system called Grants Online.

During this transition period there is no clear direction for when GMIS should be used or for what official purpose. Currently, an amendment to the grant must be administratively created in the GMIS system. In addition, some grant specialists are scanning images of the award documents into GMIS, even though it is no longer the official grant file. The grant specialists are required to keep all documents needed for official administration of the grant in the paper file.

*Award file structure.* NIST Standard Operating Procedure (SOP) 01-01-A (revised 2003) states that personnel must file all correspondence (e.g., closeout letters and audit reports) in the applicable sections, annotating section cards with documentation filed under that section. We found that it was difficult to find documents within the file because personnel had not updated the section cards specific to these Recovery Act awards. The grants office has informed us that the current file organization structure is outdated and needs revamping.

*Missing file.* Upon request, NIST could not produce for us the file for one recipient. We learned that NIST found the file after it was missing for a week. NIST maintains official files in an open space room in the grants office with general access. Its tracking system includes staff that scans files in and out of the file room; however, grants office personnel do not consistently utilize the system. NIST informed OIG that currently there is no SOP for scanning files in and out of the file room. We found that NIST is not fully complying with the requirements of the grants manual related to official file designation, structure, and stewardship. As a result, grant oversight could be hampered. Grants office management informed us that they plan to develop a solution to address this issue.

### Recommendations

We recommend that the Under Secretary of Commerce for Standards and Technology direct:

1. NIST's program office to strengthen its *NIST Construction Grants Monitoring & Oversight Procedures* manual so that it provides specific written guidance—including clarification and reference points regarding requirements for financial and scientific review;
2. NIST's program office to develop a recipient handbook to help construction grant recipients complete their projects efficiently and in accordance with regulations governing federal grant assisted construction projects; and
3. NIST's grants office to provide instructions to the grants staff on the official role of the GMIS system and the official paper files as it continues to transition to Grants Online, improve paper file structure, and strengthen internal controls on proper access to official grant files.

## IV. Noncompliance with the Buy American Act, and Other Recovery Act Rules, Presents Issues

### A. Compliance Issues Arose with the Buy American Act

The Recovery Act incorporated a “Buy American” provision,<sup>11</sup> stipulating that a public building<sup>12</sup> will not receive funding unless all of the iron, steel, and manufactured goods used in the project are U.S.–produced. Recipients may obtain waivers from the head of the department or agency if:

1. compliance would be inconsistent with the public interest;
2. the United States does not produce iron, steel, and other relevant manufactured goods in sufficient and reasonably available quantities or of a satisfactory quality (nonavailability); or
3. inclusion of iron, steel, and manufactured goods produced in the United States will increase the overall project cost by more than 25 percent.

NIST is considering two waivers of the Buy American Act. One is a de minimis waiver allowing recipients to spend up to 5 percent of certain construction material costs on non–U.S.-made items. The second is a safety, interoperability, and security waiver allowing non–U.S.-made devices to be purchased as part of a pre-existing safety or security system.

NIST has not officially announced its approval of these waivers in the *Federal Register*. Nevertheless, recipients were informed by the program officer they could install and track applicable parts as if a Buy American de minimis waiver has been granted. As explained, non–U.S.-made materials could be used up to 5 percent of total construction material costs (excluding costs such as mark-up, profit, or labor, tax). For example: a recipient was instructed to maintain a tracking spreadsheet of every non–U.S.-made item which would contain a description of the item, count, cost, and location where installed. In another instance, a recipient stated that NIST granted a global reprieve to use non–U.S.-made proprietary safety system devices.

When we brought these issues to NIST management’s attention, the program officer informed recipients via e-mail that they should not presume any waiver until an official announcement. As a result of NIST not adequately enforcing compliance with the Buy American Act, recipients could be spending government funds inappropriately by purchasing items not made in the United States without approved waivers in place.

---

<sup>11</sup> The Recovery Act incorporated provisions of the Buy American Act. Pub. L. No. 111-5, Title XVI, § 1605.

<sup>12</sup> The waiver would affect only the grant recipients with public buildings; 6 recipients out of 16 are private institutions and not subject to the Buy American Act.

### *B. Other Compliance Issues Emerged with the Recovery Act*

The Recovery Act further restricts the use of its funds and sets forth a statement of purposes and general principles on the use of funds.<sup>13</sup> Generally, the United States Code, Title 31, Chapter 13, section 1301(a) states: “[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

NIST used Recovery Act funds to hire a contractor as a grants specialist to work solely on Recovery Act-funded construction grants. During our visit to the NIST grants office, we discovered that the contracted grants specialist worked on non-Recovery Act-funded construction grants while being compensated with Recovery Act funds. According to the grants officer, the lack of staffing on non-Recovery Act construction grants caused this to occur. It was the official’s intent to amend the contract but that official did not do so. NIST could not quantify the amount of time the contractor (no longer at NIST) spent on non-Recovery Act construction grants but estimates less than a week. Regardless of the time elapsed, appropriations law prohibits a Recovery Act-funded contractor to perform non-Recovery Act work.

### *Recommendations*

We recommend that the Under Secretary of Commerce for Standards and Technology direct:

1. NIST’s program office to develop internal controls that ensure continued compliance with the Buy American provision, and
2. NIST’s grant office to establish a firewall to prevent the use of Recovery Act funds resources on non-Recovery Act activities and consult with Office of General Counsel to determine whether this use of funds violated the Anti-Deficiency Act.

---

<sup>13</sup> Pub. L. No. 111-5, § 3.

## Summary of Agency and OIG Comments

We received, from the Under Secretary of Commerce for Standards and Technology, NIST's written comments on our draft report (see the entire memorandum from January 25, 2012, in appendix C). For our final report, we have considered this response—and discussions held with NIST after we issued the draft report—and made technical revisions deemed appropriate. NIST agreed with the findings and recommendations and offered additional discussion points for finding I (recommendation 1), finding II (recommendation 3), and finding IV (recommendation 2).

**Finding I, recommendation 1:** *Agency generally concurred.* NIST stated that the premature drawdowns of Recovery Act funds (without security interests in place) resulted from a combination of failures: (a) by two recipients, who did not abide by award terms, and (b) by NIST Grants and Agreements Management Division (GAMD), with a misinterpretation of the terms. The agency agreed to take actions to avert similar occurrences in the future. NIST asserted that the premature drawdown amounts were smaller than what we stated in the draft report—and, after review of additional information from NIST, we revised these drawdown amounts in this final report.

**Finding I, recommendation 2:** *Agency concurred.* NIST agreed to "develop adequate internal controls with regard to establishing review and reconciliation of all required reports in official grant files." GAMD will make additional hires, and provide additional training, to assist grant specialists in the effort.

**Finding I, recommendation 3:** *Agency concurred.* NIST agreed to "ensure that (a) the most current single audit reports are reviewed, (b) the review is documented by the grant specialist, and (c) the report and review are kept in the official file to help determine financial status and compliance with government requirements." More specifically, it agreed to reassign construction awards to experienced federal grant personnel, in lieu of contractors (who are less familiar with NIST standard operating procedures [SOPs] regarding review of A-133 audit reports). In addition, any A-133 report findings will require a corrective action plan from the recipient before the grants officer will issue an award amendment.

**Finding II, recommendation 1:** *Agency concurred.* NIST agreed to "develop plans to accelerate the time schedule for the 5 projects either (a) scheduled for completion after or (b) at risk of being extended beyond September 30, 2013." To that end, it is currently working with award recipients and the Department to meet OMB's M-11-34 requirements.

**Finding II, recommendation 2:** *Agency concurred.* NIST agreed to "require grantees of the remaining projects to accelerate construction work to meet the deadlines as specified in grant documents or submit extension requests for NIST review." NIST is currently working with award recipients to ensure they meet all schedule and award deadlines (and help them request timely and fully-documented requests for no-cost time extensions when justifiable).

**Finding II, recommendation 3:** *Agency generally concurred.* NIST has agreed to create a checklist to ensure grant recipients comply with the Department's *Grants Manual* when

requesting no-cost extensions. However, NIST asserted that the Department does not require grantees to submit all five supporting elements listed in the manual (see the five elements in table 2 of our report). Based on NIST's request, we revised the statement about the *Grants Manual* to state that these supporting elements "should be" (but not "must be") included in extension requests for evaluation.

Nonetheless, we remain concerned with the lack of supporting information from grantees who request extensions. As indicated in table 2, grantees overlooked four of five supporting elements specified in the Department's manual when requesting extensions. Providing these elements, such as a statement indicating no other project changes are under consideration, may help minimize further extension requests. NIST should specify more supporting elements for grantees to submit in the new checklist.

**Finding III, recommendation 1:** *Agency concurred.* NIST agreed to "strengthen its *NIST Construction Grants Monitoring & Oversight Procedures* manual so that it provides specific written guidance—including clarification and reference points regarding requirements for financial and scientific review."

**Finding III, recommendation 2:** *Agency concurred.* NIST agreed to "develop a recipient handbook to help construction grant recipients complete their projects efficiently and in accordance with regulations governing federal grant assisted construction projects." More specifically, it agreed to issue supplemental clarifying instructions and guidance to recipients—as well as increase onsite reviews of recipient reports and supporting documentation.

**Finding III, recommendation 3:** *Agency concurred.* NIST agreed to "provide instructions to the grants staff on the official role of the GMIS system and the official paper files as it continues to transition to Grants Online, improve paper file structure, and strengthen internal controls on proper access to official grant files." To this end, GAMD will develop procedures for use of its file management system, FileTrail—and provide specialists desktop access to the system. GAMD will also reevaluate its SOP for the official award file (which still contains both the GMIS file and the paper file) and, after ensuring consistency in both sets of requirements, provide staff training after implementing any changes.

**Finding IV, recommendation 1:** *Agency concurred.* NIST agreed to "develop internal controls that ensure continued compliance with the Buy American provision." It continues to develop and refine processes for ensuring recipient compliance with the Recovery Act's Buy American requirements, including further additions to its January 2011 supplemental guidance. Further, NIST is currently finalizing program-wide Recovery Act Buy American waivers, which it will publish in the *Federal Register* upon issuance.

**Finding IV, recommendation 2:** *Agency partially concurred.* NIST has contacted the Office of General Counsel and NIST Budget Office to resolve the issue concerning use of Recovery Act funds to help oversee non-Recovery-related projects. However, NIST does not consider it necessary or cost-effective to establish a firewall to prevent recurrences as recommended. NIST maintains that (a) it does not have access to additional Recovery Act funds and (b) all expenses for administering and overseeing Recovery Act construction grants are borne by regular NIST staff. We agree with the NIST proposal. However, should Recovery Act funds

become available, such as through de-obligation of unused funds, NIST needs to strengthen controls to ensure it not spend Recovery Act funds on non-Recovery-related work.



## Appendix A: Objectives, Scope, and Methodology

We initiated this audit in October 2010 as part of our continuing oversight of NIST's construction grant program. The objectives of this audit were to: (1) determine the adequacy of policies and procedures developed for Recovery Act construction awards; (2) determine whether NIST has the personnel, processes, and systems in place to monitor the program; (3) assess the adequacy of monitoring activities; and (4) determine whether the construction projects have proceeded according to their original proposals.

To satisfy these objectives, we reviewed NIST's compliance with applicable laws, regulations, policies, and procedures, including:

- The American Recovery and Reinvestment Act of 2009;
- Federal Financial Assistance Management Improvement Act of 1999;
- *Department of Commerce (DOC) Grants Manual*;
- NIST Construction Grant Program Special Award Conditions;
- Department of Commerce Financial Assistance Standard Terms and Conditions;
- NIST Construction Grant Program General Terms and Conditions;
- NIST Standard Operating Procedure 01-01-A (Revised 2003) for official award files, grants management information system, and financial reconciliation;
- NIST Standard Operating Procedure 05-02, "Procedures for Reconciling ASAP Withdraws & Financial Status Reports (SF-269) and Enforcement Actions for NIST Grants and Agreements Management Division"
- 15 CFR Part 14 *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations*;
- *NIST Construction Grants Monitoring & Oversight Procedures Manual*;
- American Recovery and Reinvestment Act (ARRA) Supplemental Buy American Guidance for NIST Construction Grants;
- GMIS Pre-Award Checklist Guideline (for Single Audit Review); and
- 31 USC Chapter 13 – Appropriations 1301 (a).

To gain an understanding of NIST's monitoring efforts and records management, we reviewed grants monitoring procedures and interviewed pertinent staff, including:

- Grants Management Information System (GMIS);
- NIST Grants and Agreements Management Division (GAMD) personnel;

- NIST Office of Facilities and Property Management (OFPM) personnel; and
- NIST Construction Grants Program Office (NCGP) personnel.

To review the results of NIST's monitoring efforts, we reviewed files of all 16 NIST Recovery Act construction grant recipients, including:

- performance progress reports;
- financial progress reports;
- single audit reviews; and
- other document reviews including security interests, award extension requests, and official award file section cards (for file structure and organization).

For further review of the results of NIST's monitoring efforts, we judgmentally selected four recipients for site visits based upon the following selection factors: site proximity, level of completion, and award amount. Our review included:

- financial reconciliation,
- Buy American and Davis Bacon compliance, and
- adherence to original proposal.

Regarding data reliability, we did not rely on computer-generated information for this audit. The NIST grants officer informed us that its paper-based system was the official file of record.

We performed our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our review from October 2010 through October 2011 under the authority of the Inspector General Act of 1978, as amended and the Department Organization Order 10-13. We performed our work at:


- NIST in Gaithersburg, Maryland; and
- Recipient locations in Atlanta, Georgia; Auburn, Alabama; Washington, DC; and Lexington, Kentucky.

## Appendix B: Recipient Information

Recipient	Science Conducted at Research Facility	Federal Award Amount	Recipient Share Amount	Total Project Cost
Columbia University	Global climate processes	\$ 1,363,240	\$ 1,363,240	\$ 2,726,479
University of Maine	Deep water offshore wind energy industry	\$ 12,420,000	\$ 2,971,410	\$ 15,391,410
Rice University	Fundamental and applied physics	\$ 11,130,018	\$ 33,390,055	\$ 44,520,073
University of Nebraska	Nanofabrication, electron microscopy, and synthesis and characterization	\$ 6,904,993	\$ 6,904,993	\$ 13,809,986
University of North Carolina	Marine biotechnology	\$ 14,979,888	\$ 14,979,888	\$ 29,959,776
University of Kentucky	Biomass and biofuels, distributed power generation and storage, and electric vehicles	\$ 11,832,685	\$ 3,944,228	\$ 15,776,913
Nova Southeastern University	Coral reef ecosystem	\$ 14,990,071	\$ 15,584,636	\$ 30,574,706
Purdue University	High-performance buildings for systems related to future-built environments	\$ 11,750,000	\$ 11,750,000	\$ 23,500,000
University of Kansas	Energy and transportation, global climate change, composite materials technology, and sustainable building practices	\$ 12,275,527	\$ 6,500,000	\$ 18,775,527
Woods Hole Institute	Sensor technologies for ocean observation	\$ 8,101,724	\$ 2,025,436	\$ 10,127,160
Auburn University	Standards, measurement, and forecasting of the environment; biofuels, water, food quality, safety	\$ 14,427,075	\$ 14,427,075	\$ 28,854,150
Georgetown University	Soft matter research: liquid crystals, gels, colloids, polymers, foams, granular matter.	\$ 6,900,000	\$ 48,829,184	\$ 55,729,184
Georgia Tech	Energy efficient products and sustainable energy sources	\$ 11,632,804	\$ 11,632,804	\$ 23,265,608
University of Maryland	Advanced quantum science	\$ 10,346,123	\$ 5,173,061	\$ 15,519,184
University of Miami	Power of hurricanes and the biology of coastal waters	\$ 15,000,000	\$ 28,764,462	\$ 43,764,462
University of Pittsburgh	Nanoscience and technology	\$ 15,000,000	\$ 12,751,516	\$ 27,751,516
<b>Total</b>		<b>\$ 179,054,148</b>	<b>\$ 220,991,988</b>	<b>\$ 400,046,134</b>

Source: OIG, based on NIST data

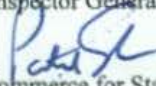
## Appendix C: Agency Response



UNITED STATES DEPARTMENT OF COMMERCE  
National Institute of Standards and Technology  
Gaithersburg, Maryland 20899-  
OFFICE OF THE DIRECTOR

JAN 25 2012

MEMORANDUM FOR Ann C. Eilers  
Principal Inspector General for Audit and Evaluation


From: Patrick Gallagher   
Under Secretary of Commerce for Standards and Technology

Subject: NIST Response to the draft report, *Oversight Activities of NIST's Recovery Act Construction Grant Awards Are Generally Effective but Need Improvement*

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report, *Oversight Activities of NIST's Recovery Act Construction Grant Awards Are Generally Effective but Need Improvement*, dated December 22, 2011. Staff from the National Institute of Standards and Technology's (NIST) Office of Facilities and Property Management (OFPM) and Grants and Agreements Management Division (GAMD) have reviewed the draft report and offer the comments in the attached document. NIST concurs with the majority of the recommendations.

If you have any questions, please contact Rachel Kinney at (301) 975-8707.

Attachment



## Office of Inspector General Draft Report

*Oversight Activities of NIST's Recovery Act Construction Grant Awards are Generally Effective but Need Improvements***National Institute of Standards and Technology (NIST) Response to Recommendations****Section I Recommendations:**

"We recommend that the Under Secretary of Commerce for Standards and Technology direct the NIST Grants Chief to:"

Recommendation 1: "strengthen internal controls to ensure that all appropriate award conditions are met before NIST allows the drawdown of federal funds".

**NIST Response:**

NIST generally agrees with this finding, subject to the discussion below concerning the dollar amounts referenced in Section I.A. of the draft audit report (page 3). NIST notes that the award conditions pertaining to American Recovery and Reinvestment Act of 2009 (Recovery Act) construction projects, including the proper application and interpretation of the security interest and National Environmental Policy Act (NEPA) requirements as well as the proper use of existing internal controls (e.g., restrictions on Automated Standard Application for Payment (ASAP) drawdowns by recipients) designed to avert similar occurrences in the future, have been reviewed and discussed in detail with the NIST Grants Officer and NIST Grant Specialists assigned to Recovery Act construction grants, NIST program office staff and contractors, and with the Office of General Counsel (OGC) Federal Assistance Law Division (FALD). NIST further notes that the security interest and NEPA requirements for all 16 ARRA construction awards are complete and that there are no recipients currently subject to drawdown restrictions.

The premature drawdowns by two of the 16 Recovery Act Construction Grants Recipients resulted from a combination of a failure by the two recipients to abide by the award terms concerning disbursements of NIST award funds and from a misinterpretation of the security interest and NEPA terms and conditions of the award by the Grants and Agreements Management Division (GAMD). GAMD concluded that the recipients were authorized to draw down funding for non-construction purposes, such as design and engineering, prior to the recipient's satisfaction of the security interest requirements. The funding drawn down by the two recipients was for non-construction purposes.

At the time of the drawdowns, the two recipients in question were in the process of finalizing the security interest documentation in consultation with the FALD and legal counsel for the recipients. The progress and status of these efforts were being closely monitored by GAMD at NIST. The security interest documentation was actually executed and recorded by both recipients in December 2010. As a result, drawdowns after December 2010 occurred after the security interest documentation was executed and recorded by each recipient, but prior to the corresponding award amendment being issued by NIST. Importantly, the Federal Interest in each project was protected upon execution

and recordation of the security interests, and the administrative delay in issuing the corresponding award amendments did not jeopardize the Federal Interest in the projects. Accordingly, given the time frame of the drawdowns in conjunction with the execution and recording date of the security interest documentation by the recipient, NIST respectfully requests that the dollar amounts of the drawdowns on Page 3, Section A, last paragraph, be corrected to reflect the accurate amounts of \$135,124.59 and \$114,443.37, respectively, which pertain to the drawdowns occurring prior to each recipient's execution and recordation of the security interest in their respective NIST project.

It should also be noted that the language from Section I.A. of the draft audit report stating "NIST will release no grant funds until recipients have complied with this provision" does not entirely summarize the security interest requirements under the NIST Construction Program General Terms and Conditions (NIST Construction GT&Cs). Specifically, Section 2 of the NIST Construction GT&Cs (December 2009) and Section 2 of the NIST Construction GT&Cs (September 2010) both provide that NIST will not release funds under the award until the recipient has complied with the security interest requirements, unless other arrangements satisfactory to NIST are made.

Recommendation 2: "develop adequate internal controls with regard to establishing review and reconciliation of all required reports in official grant files".

NIST Response:

NIST agrees with this finding. NIST GAMD has an existing Standard Operating Procedure (SOP) for the review and reconciliation of required financial and technical reports, but the SOP was not followed in these instances. GAMD will provide additional training to assist the Grant Specialists in properly reconciling and filing financial and technical reports in official grant files.

In addition, GAMD recently received authorization to hire several Grant Specialists which will allow for more equitable and efficient distribution of work load to permit proper time to carry out these important administrative practices.

Recommendation 3: "ensure that (a) the most current single audit reports are reviewed, (b) the review is documented by the grant specialist, and (c) the report and review are kept in the official file to help determine financial status and compliance with government requirements".

NIST Response:

NIST agrees with this finding. NIST GAMD has an existing SOP for the review of A-133 audit reports, but unfortunately the SOP was not followed in these instances. NIST GAMD has reassigned the Construction awards to experienced Federal grant personnel, in lieu of contractors, who are more familiar with the NIST processes in place, including the SOP on the review of the A-133 audit reports. Additionally, the Grants Officer will ensure that no amendment is issued unless the most recent A-133 audit report is reviewed and filed. If there are findings in the report, the Grants Officer will require a corrective action plan from the recipient via an award amendment.

## Section II Recommendations

"We recommend that the Under Secretary of Commerce for Standards and Technology direct the NIST program office to:"

Recommendation 1: "develop plans to accelerate the time schedule for the 5 projects either (a) scheduled for completion after or (b) at risk of being extended beyond September 30, 2013".

NIST Response:

NIST agrees with this finding and is currently working with its Recovery Act construction award recipients and with the Department of Commerce to meet the Office of Management and Budget (OMB) requirements set forth in M-11-34.

Recommendation 2: "require grantees of the remaining projects to accelerate construction work to meet the deadlines as specified in grant documents or submit extension requests for NIST review".

NIST Response:

NIST agrees with this finding and is currently working with its Recovery Act construction award recipients to ensure that existing construction schedules and NIST award deadlines are met. NIST will also work with its recipients to request timely and fully documented requests for no-cost time extensions where justified by the facts and circumstances of a particular project.

Recommendation 3: "require recipients to submit all elements necessary in their extension request before making a decision to recommend or deny the request—as well as include extension guidance in the procedures manual".

NIST Response:

NIST generally agrees with this finding, subject to the discussion below concerning inconsistencies between the language in Section II.B. (pages 9 and 10) of the draft audit report and Section G.1 of Chapter 17 of the *Department of Commerce Grants and Cooperative Agreements Manual* (DoC Grants Manual). NIST will abide by the requirements set forth in Chapter 17 of the DoC Grants Manual pertaining to the submission and review of requests for award extensions. These requirements also have been reviewed and discussed with the Grants Officer and Grants Specialists, Program Office staff and with FALD. In addition, GAMD will create a checklist specifically for no-cost extensions to ensure that requests comply with the requirements of the DoC Grants Manual.

The language from Section II.B. of the draft audit report (pages 9 and 10) does not accurately summarize the guidance provided in Section G.1. of Chapter 17 of the DoC Grants Manual. While Section G.1. of Chapter 17 the DoC Grants Manual contemplates that the majority of recipient requests for no-cost award extensions will be submitted to the funding Agency at least 30 days prior to the end of date of the award, this section also recognizes that there may be exigent or other circumstances where 30 days advance

notice is not practicable. This is evinced through the use of “ordinarily” immediately following “must” in describing the timing of no-cost extension requests, as well as by the immediately preceding sentence, which guides the recipient to submit the extension request “[a]s soon as the recipient becomes aware that it will not be possible to meet the time schedule....” However, the discussion in Section II.B. of the draft audit report appears to inaccurately cast the 30 day advance submission as an absolute requirement, rather than as a guidepost for recipients and for Agency grants/program staff.

In addition, Section G.1. of Chapter 17 of the DoC Grants Manual does not set forth mandatory requirements in describing the information to be included in a recipient’s request for an award extension, rather it uses “should” -- not “must” or “shall” -- in describing the elements of a request. This is an important distinction and serves to characterize the information contained in items Section G.1.a through 1.e as suggested or recommended elements of an extension request and not as mandatory requirements. However, the discussion in Section II.B. of the draft audit report inaccurately characterizes these informational elements as being “required” as part of a recipient’s extension request.

Accordingly, NIST requests that OIG amend the language in Section II.B. of the draft audit report (including Table 2) to accurately summarize the guidance in Section G.1. of Chapter 17 of the DoC Grants Manual as it pertains to the timing of, and information to be contained in, a recipient’s request for a no-cost award extension. These changes are necessary to properly frame the guidance provided by the Grants Manual and to provide an accurate basis for OIG’s findings and recommendations in Section II of the draft audit report. In this connection, NIST also requests that OIG consider replacing its use of the term “necessary” in Recommendation 3 on page 10 in describing the elements to be included in extension requests and, instead, recommend that NIST follow the guidance in Section G.1. of Chapter 17 of the DoC Grants Manual (or other appropriate source) in considering requests for award extensions.

### Section III Recommendations

“We recommend that the Under Secretary of Commerce for Standards and Technology direct:”

Recommendation 1: “NIST’s program office to strengthen its *NIST Construction Grants Monitoring & Oversight Procedures* manual so that it provides specific written guidance—including clarification and reference points regarding requirements for financial and scientific review”.

NIST Response:

NIST agrees with this recommendation.

Recommendation 2: “NIST’s program office to develop a recipient handbook to help construction grant recipients complete their projects efficiently and in accordance with regulations governing federal grant assisted construction projects”.



**NIST Response:**

NIST agrees to issue supplemental clarifying instructions and guidance to its recipients pertaining to compliance with award terms, and to increase on-site reviews of recipients' financial and technical reports and supporting documentation.

Recommendation 3: "NIST's grants office to provide instructions to the grants staff on the official role of the GMIS system and the official paper files as it continues to transition to Grants Online, improve paper file structure, and strengthen internal controls on proper access to official grant files".

**NIST Response:**

NIST agrees with this finding. Due to changes in management, the GAMD file management system, FileTrail, had not been implemented properly. GAMD will be accessing the capabilities of the system and begin to develop procedures for its use, including giving the specialists access to the system at their desktops. This will ensure that the files are tracked properly as the file gets passed to the next clearance official. GAMD will also be re-evaluating its SOP for the Official Award File and will provide training to its staff once it has been implemented.

**Section IV Recommendations**

"We recommend that the Under Secretary of Commerce for Standards and Technology direct:"

Recommendation 1: "NIST's program office to develop internal controls that ensures continued compliance with the Buy American provision".

**NIST Response:**

NIST agrees and is continuing to develop and refine its processes for ensuring recipient compliance with the Recovery Act Buy American requirements, including supplementing the *American Recovery and Reinvestment Act (ARRA) Supplemental Buy American Guidance for NIST Construction Grants*, January 12, 2011, as issued by NIST and approved by the Department of Commerce's Procurement Executive. In addition, NIST is in the process of finalizing program-wide ARRA Buy American waivers for de minimis construction materials and for safety, interoperability and security components of pre-existing safety or security systems. These waivers will be published in the *Federal Register* upon issuance by NIST.

Recommendation 2: "NIST's grant office to establish a firewall to prevent the use of Recovery Act funds resources on non-Recovery Act activities and consult with OGC to determine whether this use of funds violated the Anti-Deficiency Act".

**NIST Response:**

NIST has contacted the Department of Commerce, Office of General Counsel, General Law Division to request a legal opinion regarding whether this incidence may constitute a violation of the Anti-Deficiency Act. GAMD has also contacted the NIST Budget Office for guidance on initiating the process of reimbursing the Recovery Act account.

GAMD does not consider it necessary or cost effective to establish a firewall to prevent the use of Recovery Act funds as recommended in Section III. C. Recommendation 2. NIST ARRA Construction Awards are now being administered by Federal employees who are paid from an overhead account. NIST does not have access to additional Recovery Act funds and all expenses for Recovery Act Construction Grant administrative oversight is being borne by NIST.