

OIG Recovery Act Flash Report

US Department of Commerce
Office of Inspector General

October 2009

Program/Operation: American Recovery and Reinvestment Act

Risk Areas:

Cost

Schedule

Performance/Quality

Accountability/Transparency

American Recovery and Reinvestment Act of 2009

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)

The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated \$180 million to the National Institute of Standards and Technology (NIST) for a competitive grant program for the construction of research science buildings. NIST issued four grant awards of approximately \$56 million for unfunded meritorious proposals previously submitted under the FY 2008 competition and will issue awards for approximately \$120 million (in funds they will award in FY 2010) under a new competition.

From its Recovery Act appropriation, National Oceanic and Atmospheric Agency (NOAA) allocated up to \$167 million for the Habitat Conservation and Restoration Program, a competitive financial assistance program to assist marine and costal habitat restorations. NOAA awarded 50 cooperative agreements in FY 2009 using Recovery Act funds.

Our objective was to review the NIST and NOAA solicitation, selection, and the pre-award phase of the awards and determine whether the awards were made competitively in accordance with Department of Commerce and Recovery Act requirements. Although we did recommend areas for improvement, our review found that NIST and NOAA complied with Department of Commerce and Recovery Act requirements related to competition. This report includes recommendations to help NIST better document its selection process and NOAA to more adequately act on its assessments of the financial and management capabilities of potential grantees before making awards.

During our review we found that the Commerce Office of Acquisition Management (OAM), which is responsible for developing policy for the Department's grantor agencies, has not revised its grants manual to clarify the bureaus' responsibility for conducting individual background

Recovery Act Funds Awarded

NIST

| | |
|--|---------------------|
| Auburn University | 14.4 million |
| Rice University | 11.1 million |
| University of Miami | 15.0 million |
| University of North Carolina, Wilmington | <u>15.0 million</u> |
| | \$55.5 million* |

NOAA (Coastal Areas)

| | |
|-----------------|---------------------|
| Alaska | 4.6 million |
| Great Lakes | 16.1 million |
| Northeast | 34.5 million |
| Northwest | 23.9 million |
| Pacific Islands | 6.7 million |
| Southeast | 34.5 million |
| Southwest | <u>31.6 million</u> |
| | \$151.9 million * |

* The differences between the appropriated amounts and the award amounts include administrative costs, contract support and future funding needs.

screenings on applicants and recipients of Commerce grants and cooperative agreements. As a result, NIST and NOAA did not have standard procedures to follow for conducting individual background screenings for the Recovery Act funds. This report also addresses the importance of developing these procedures and revising the grants manual so that there is a common framework for the administration of grants and cooperative agreements within Commerce.

NIST’s Solicitation, Selection, and Pre-Award Process for the Construction Grant Program Met Commerce Requirements, but the Evaluation Board Documentation Could Be Improved

We found that NIST complied with all the requirements of the Department’s Grants Manual and the Announcement of Federal Funding Opportunity. However, the rationale for the evaluation board’s ranking of proposals was not clearly documented and therefore required additional verbal clarification by NIST. Specifically, NIST complied with:

- The Department’s requirements to
 - Develop and publish merit-based criteria, as found in NIST’s Recovery Act Construction Grant Program Federal Funding Opportunity;
 - Place a notice in the *Federal Register* announcing the availability of funds and soliciting award applications, with program-specific evaluation criteria and the process for reviewing and selecting applications for funding; and
 - Award financial assistance on the basis of a competitive review process;
- Recovery Act requirements, including consideration of the shovel-readiness of projects, jobs measurement, and adherence to the Davis-Bacon Act and Buy American provisions; and
- Pre-award administrative requirements.

In FY 2008, NIST had \$30 million available for a new competitive construction grant program to fund research science buildings. It used a two-tiered approach for the selection process beginning with an administrative review¹ and concluding with the selecting officials’ recommendation for funding (see Figure 1).

Figure 1. **NIST Selection Process**



In June 2009, NIST published a *Federal Register* notice announcing that \$180 million in Recovery Act funds were available for construction grants. With OMB agreement, NIST would

¹ An administrative review identified incomplete and noncompliant proposals.

award up to \$60 million to unfunded meritorious proposals submitted under the FY 2008 competition and the remaining \$120 million based on a new competition.

As part of its competitive review to award the \$60 million in Recovery Act funds, NIST selected the top 25 of the remaining proposals based on the technical reviews² from the FY 2008 competition. The evaluation board, made up of two experts each in the field of science and construction, ranked the projects based on discussions of the proposals' strengths and weaknesses. NIST sent questions to the top twelve applicants, as ranked by the evaluation board, to determine suitability for funding under the Recovery Act. Finally, to determine which applicants should receive awards, the selecting official considered the technical reviews; the evaluation board's ranking; the answers to the questions; the requirement that there be a balance/distribution among NIST, NOAA, and National Telecommunications and Information Administration (NTIA) projects³; and the availability of funds, among other selection factors.

We reviewed NIST's documentation relevant to each stage of the selection process and found that the technical review process and the selecting official's decisions were adequately documented. However, we believe that the evaluation board's comparative ranking process could have been more clearly documented consistent with the other phases of the selection process.

Recommendation

We recommend that NIST improves its documentation of the evaluation board selection process to ensure that NIST's financial assistance award decisions are clearly documented.

NOAA's Solicitation and Selection Processes for the Habitat Restoration Program Awards Met Commerce and Recovery Act Requirements for Competition

Our review found that NOAA's criteria, procedures, and practices for the solicitation, review, and selection of the Habitat Restoration Program awards complied with Commerce and Recovery Act requirements related to competition and were adequate to guide agency officials in making merit-based discretionary funding decisions. For example, NOAA established and followed its criteria to select a percentage of projects by geographic area similar to the percentage of applications submitted to NOAA (see Figure 2, next page).

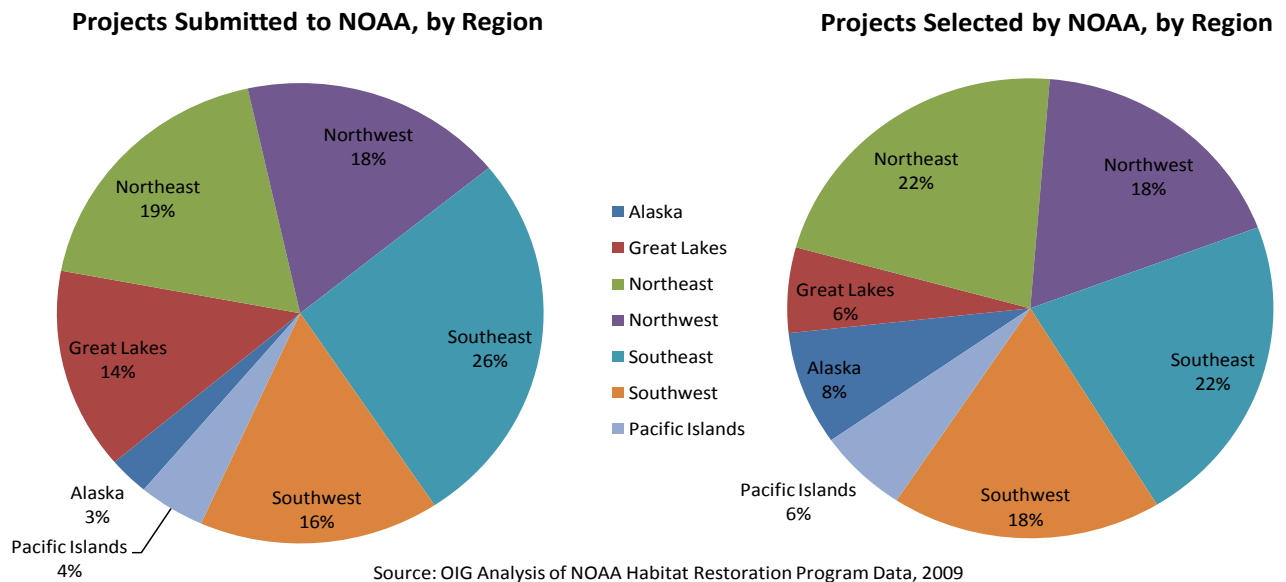
² The technical review involves scoring a complete proposal with a weighted score based on a minimum of three independent reviews of the proposal's scientific and technical merit, construction plans, and project implementation.

³ According to the Announcement of Federal Funding Opportunity, selected projects should balance all applicable fields of science (including measurements, oceans and atmosphere, and telecommunications) that complement one or more programs of DOC's three science organizations: NIST, NOAA, and National Telecommunications and Information Administration (NTIA).

Specifically, we found that NOAA adequately documented its process from solicitation to selection,⁴ as well as complied with:

- The Department’s requirements to
 - Develop and publish merit-based evaluation criteria, as found in the National Marine Fisheries Service (NMFS) Habitat Restoration Program Federal Funding Opportunity;
 - Place a notice in the *Federal Register* announcing the availability of funds and soliciting award applications, with program-specific evaluation criteria and the process for reviewing and selecting applications for funding; and
 - Award financial assistance on the basis of a competitive review process;
- Recovery Act requirements, including consideration of the shovel-readiness of projects, jobs measurement, and adherence to the Davis-Bacon Act and Buy American provisions; and
- The pre-award administrative requirements, except for those noted below.

Figure 2. NOAA-Awarded Grants for Habitat Restoration



⁴ We reviewed NOAA’s documentation of its process from solicitation to selection. First, we assessed how NOAA solicited 1094 original applications, removed duplicates and nonconforming applications, and reviewed and ranked the 814 applications using technical reviewers in seven regions. Next, we reviewed NOAA’s documentation of the process involved in forwarding 109 highly-ranked projects to the panel for further review, as well as the review panel documentation of its recommendations to the selecting official. We also assessed the selecting official’s documentation providing the rationale for selecting the 50 projects awarded funding, including program and policy justification for several higher-ranked projects they did not choose.

NOAA Did Not Review Prior Audit Reports and Take Actions to Mitigate Risks of Making an Award to an Entity with Known Performance Problems

NOAA did not always use information available in prior audit reports that reported systemic problems and weaknesses in the financial management systems of applicants as part of its assessment of past performance. Most nonfederal entities that expend \$500,000 or more of federal awards in a year must obtain an annual audit in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133.⁵

These audit reports are submitted to the Federal Audit Clearinghouse,⁶ which posts summaries on a public website and scans the reports on a secured website for downloading by registered users.⁷ Single audits can provide valuable information related to a grantee's past performance and capabilities and help determine whether prior issues persist.

The Department of Commerce Grants Manual requires that once an agency recommends an application for funding, the program and grants officer shall determine the applicants' management and financial capabilities. We found that NOAA did not effectively use prior audits to assess recipients' past performance under prior federal awards.

For example, NOAA awarded Recovery Act funds to a recipient that had a finding in its 2007 audit report of noncompliance with Davis-Bacon requirements. The Davis-Bacon Act requires contractors to pay prevailing wage rates to laborers employed on federally assisted construction contracts and requires the award recipient to keep the wage rate documentation that the contractor met this requirement. According to the report's finding, the auditors reviewed two construction contracts and could not access documentation of oversight of prevailing wages. The recipient obtained the documentation after the auditor's inquiry but there was no mention in the audit report whether the auditors reviewed the documentation to determine whether the contractors paid prevailing wage rates. This recipient is receiving Recovery Act construction funds and must comply with the Davis-Bacon Act. NOAA's pre-award process, however, did not address the past performance problem related to Davis-Bacon.

⁵ The Single Audit Act Amendments of 1996 established audit requirements for state, local, tribal governments, and nonprofit organizations receiving federal financial assistance. Under the act, as implemented, nonfederal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in federal awards from more than one agency must be subject to a "single" audit, conducted by an independent auditor, who submits the resulting audit report to the Federal Audit Clearinghouse.

⁶ The Federal Audit Clearinghouse serves as the central collection point and distribution center for all single audit reports. Its primary function is to receive the audit report and data collection form from the auditee, archive a copy of the report and the data collection form, and make available copies of the audit report to each federal award agency that provides direct funding to the auditee when the report identifies a finding related to that agency's awards.

⁷ For summary information on all single audit reports filed with the Federal Audit Clearinghouse since 1996, access <http://harvester.census.gov/fac>. The Image Management System is the secure, web-based, query system for federal agency authorized users to query and download images of single audit reports with current or prior year findings beginning with a fiscal year ending date of 2002.

In another example, NOAA awarded Recovery Act grant money to a government entity for habitat restoration activities. Our review of the summary document that NOAA used in its review indicated that the entity had audit findings related to reporting, allowable costs, sub-recipient monitoring, period of availability of federal funds, cash management, equipment and real property management, procurement, and suspension and debarment. NOAA did not obtain the single audit report to determine whether these findings were relevant to the award made to the government entity.

Although NOAA obtained the summary information available on the public website for all 50 Recovery Act awards, it did not obtain actual copies of the single audit reports that described findings in order to determine the extent of the past performance problems. Prior findings, including those of other federal programs, are important in assessing an applicant's past performance and should factor into the evaluation of whether an applicant is reliable, capable, and can reasonably be expected to comply with award requirements. When audit findings noted in a single audit report might affect future performance, an agency should consider special award conditions or other remedies to mitigate known problems. In the first example cited above, NOAA could have included a special award condition requiring the recipient to demonstrate how it is complying with the Davis-Bacon requirement before drawing funds.

Recommendation

We recommend that the NOAA grants office review prior audit reports as part of its evaluation of an applicant's past performance in order to determine whether special award conditions are warranted, and include special award conditions to mitigate risks of making an award to an organization with known performance problems.

Commerce's Grants Manual Has Not Been Updated to Define When and How Individual Background Screenings Will be Conducted

During our review of the NOAA and NIST Recovery Act pre-award process, we found that Commerce OAM had not revised its guidance on how to perform individual background screenings since OIG no longer conducts these checks for the Department. The Commerce Grants Manual, Chapter 21, "Guidelines and Procedures for Completing an Individual Background Screening using Form CD-346, Applicant for Funding Assistance," was last updated in December 2007 when the Department's administrative procedures included a role for the OIG in the review process. However, in October 2008, OIG notified the Department that it would no longer be part of the background screening process, which left the existing guidance outdated.

The Commerce Grants Manual states that the intent of its policy is to assure that Department program and grants administration officials take precautions "making awards only to those recipients that are responsible, competently managed and committed to achieving award objectives." One of the methods to make this determination is to perform individual background screenings. This is to determine whether any key individuals associated with the applicant have been convicted or are presently facing criminal charges (e.g., fraud, theft, or perjury) or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

The current manual requires individual background screening of key individuals of the applicant unless (1) the proposed award amounts are \$100,000 or less, (2) the applicants are accredited colleges and universities, (3) applicants are units of a state or local government, or (4) applicants are economic development districts designated by the Commerce Economic Development Agency. The manual also addresses the frequency of the background checks and requires that screenings occur at least once in a 3-year interval unless there are changes in key individuals of the organization—or the program officer or grants officer believes there is a good reason to require the screenings more frequently.

We found that NIST awarded Recovery Act funds to universities that would have been exempt from background screenings under the current manual procedures. However, NOAA made 50 awards with Recovery Act funds and 18 of these awards went to different nonprofit organizations that required screenings under the current guidance. We found that 8 of the 18 nonprofits underwent background screenings within the last three years, leaving 10 nonprofit organizations without any individual background screenings performed.

Conducting the individual background screenings serves to inform Commerce officials whether they should risk awarding funds to the entity considered for a grant or cooperative agreement. While the responsibility for conducting the background screening has clearly transitioned from the OIG to the individual grants offices, the applicability and importance of the review has not changed. In fact, the grants officers have always been responsible for ensuring that the results of the background screenings are considered in their management of the grants and cooperative agreements. Historically, an adverse finding could have required a range of actions from designating a recipient as a high risk to terminating or suspending an award.

We initially discussed this finding with OAM's senior procurement official in September 2009. Since then, OAM has worked to address this finding by collaborating with Office of General Counsel and the Department's grants offices, in consultation with the OIG, to re-write the appropriate chapters of the grants manual to clarify the Grants Officer's responsibilities for conducting background screenings.

Recommendation

We recommend that OAM revise the grants manual so that the individual grantor agencies in Commerce have standard guidance and procedures for all Commerce agencies to follow for conducting the individual background screenings. Once the policy is developed, OAM should work with all Commerce agencies receiving funds, including NIST and NOAA, to determine whether the awards made under the Recovery Act need individual background screenings based on the new policy and how obtaining these screenings are best accomplished by the Department. The policy should be followed for both Recovery Act awards and all other discretionary awards.

BACKGROUND

The *American Recovery and Reinvestment Act of 2009* provided \$16 million for Office of Inspector General audits and oversight of Commerce's Recovery Act activities. This is a flash report, not an audit conducted in accordance with Government Auditing Standards, and is significantly reduced in scope.

Our work was performed in accordance with the *Quality Standards for Inspections* (rev. January 2005) issued by the President's Council on Integrity and Efficiency, and under authority of the IG Act of 1978, as amended, and Department Organization Order 10-13, dated August 31, 2006. Under the Recovery Act, inspectors general are expected to be proactive and focus on prevention. We believe this flash report responds to this intent.