

Welcome: Your NIST Grants Team

Federal Program Officer (FPO)

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Agenda



Questions & Answers

As the official Recipient of the award, you must comply with the following:

- ❑ **2 CFR PART 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.** ([2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#))
- ❑ **Department of Commerce Financial Assistance Standard Terms and Conditions** ([DOC Standard Terms and Conditions - 12 November 2020 PDF 0.pdf \(commerce.gov\)](#))
- ❑ **NIST Standard Terms and Conditions for Extramural Construction Projects** ([NIST Standard Terms and Conditions for Construction Projects | NIST](#))
- ❑ **Specific Award Conditions.**

Proper accounting and grants administration processes and procedures:

- Financial system in place ([2 CFR 200.302 -- Financial management](#))
- Source documentation
- Comparison of expenditures against the approved budget
- Written procedures
- Internal controls ([2 CFR 200.303 -- Internal controls](#))
- Procurement policies ([2 CFR 200.317 - .327 – Procurement Standards](#))
- Equipment policies ([2 CFR 200.313 – Equipment](#))

Procedures

- Documented procedures that reflect applicable state/local laws and regulations and applicable Federal laws.
- Ensure contractors perform in accordance with contract terms.
- Include standards of conduct covering conflicts of interest in contract selection and administration.
- Maintain records that support the procurement history (rationale for procurement method, selection of contract type, contractor selection or rejection, basis for contract price).

Cost Analysis

- Must verify if contractor is eligible to conduct business with the Federal government ([SAM.gov](https://www.sam.gov))
 - ***Is the contractor debarred, suspended, or otherwise excluded?***
- Determine most economical approach.
- Avoid duplicative or unnecessary items.
- Use value engineering clauses in contracts of sufficient size.
- Perform cost/price analysis.

Responsibilities – Procurement Standards (cont)

Method of Procurement

- Conducted in a manner providing full and open competition.
- Must use one of the set procurement methods:
 - 1) Informal Procurement Methods
 - Micro-purchase
 - Small purchase
 - 2) Formal Procurement Methods
 - Sealed bids
 - Competitive proposals
 - 3) Noncompetitive Procurement
 - Aggregate cost doesn't exceed Micro-Purchase threshold,
 - Item/service only available from a single source,
 - Public exigency will not allow for competitive review process,
 - NIST expressly authorizes a noncompetitive proposal, or
 - Competition determined inadequate after soliciting a number of sources.

Contract Provisions

Contracts must contain applicable provisions described in [Appendix II](#) of 2 CFR 200 (e.g. EEO compliance, debarment and suspension clause, termination for cause/convenience and breach of contract clause (dependent on contract amount), etc.).

NIST Review

The program office and/or grants office may request documentation throughout the project based on circumstances.

Responsibilities – Equipment

[2 CFR 200.313 – Equipment](#)

- Title vests with recipient upon acquisition.
- Records must include description, serial number, source of funding, acquisition date, cost.
- Physical inventory at least once every two years.
- Control system to prevent loss, damage, theft.
- Adequate maintenance procedures.
- Use for authorized purpose until no longer needed.
- Contact NIST for disposition instructions.

Payments are made electronically through the online Automated Standard Application for Payments (ASAP) system www.asap.gov

- Recipient's official payment requestor can request funds in ASAP by advance payment or reimbursement method as needed to pay for allowable award costs.
- Funds drawn in advance must be kept in an interest-bearing account.
- Interest accrued in excess of \$500 per calendar year must be returned.
- Advanced payments must be timed to limit excess cash on hand.

Contact your Grants Specialist if you identify a cash error and need to return funds

Reporting Frequency and Due Dates

- Quarterly Reports:
 - Federal Financial Report (SF-425) and Performance Progress Report (PPR) must be submitted electronically via e-mail to GReports@nist.gov for the periods ending March 31, June 30, September 30, and December 31.
 - Reports are due no later than 30 calendar days following the end of each reporting period.

- Final Reports must be submitted within 120 days after the expiration of the period of performance to closeout@nist.gov.

- Reports are required regardless if funds were expended, or any activities has occurred.
- To the greatest extent possible, the SF-425 and PPR should be submitted together in the same email.

Financial Report: [Federal Financial Report Form](#)

You may copy your assigned Program Officer, but reports must not be sent directly to NIST personnel.

Federal Funding Accountability and Transparency Act (FFATA) Reporting

- <https://www.fsrs.gov>
- All first-tier **subawards** in excess of \$30,000
- Executive compensation data, if applicable

The Federal Funding Accountability and Transparency Act (FFATA) requires that all subawards over \$30,000 are reported via the FFATA Subaward Reporting System (FSRS). Prime Recipients are to report any subgrants over \$30,000 by the end of the month following the month in which the subgrant was issued.

Single Audit

- <https://facweb.census.gov>
- Required if \$750,000 or more in Federal funding is expended in a fiscal year

Unfunded Award Action Requests



**The most common unfunded action requests that may require agency approval
(note: this is not an all-inclusive list)**

- Key personnel changes
- Budget modifications
- Project end date extensions (no-cost extensions)
- Satisfying Specific Award Conditions

Requests for written agency approvals and any other unfunded award action requests must be submitted directly to ugam@nist.gov (See SAC #13)

Unfunded Award Action Requests



- Only an Amendment to your Financial Assistance Award **or** alternative written notification, such as an Administrative Change Letter from the Grants Officer or their designee, are considered official approval of a request.
- Certain actions don't necessarily require prior agency approval (e.g., change of address, change of administrative grants contacts, etc.); however, the Grants Specialist and Federal Program Officer must still be notified.

You may copy your assigned Program Officer, but requests must not be sent directly to NIST personnel.

All records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report.

Exceptions:

- **Litigation, Claim, or Audit**

Records retained until resolved and final action taken.

- **NIST Request**

Notified in writing by NIST to extend retention period.

- **Property**

Equipment and real property records retained three years after final disposition.

Common Audit Findings

- ✓ Lack of written policies and procedures
- ✓ Inadequate documentation on file
- ✓ Failure to obtain prior approval or starting an activity before being authorized
- ✓ Inadequate or untimely report submission
- ✓ Unallowable costs per grant terms and conditions
- ✓ Failure to verify excluded parties when contracting (www.SAM.gov)
- ✓ Excess cash on hand
- ✓ Comingling of funds

OFPM DCD is your Program Office

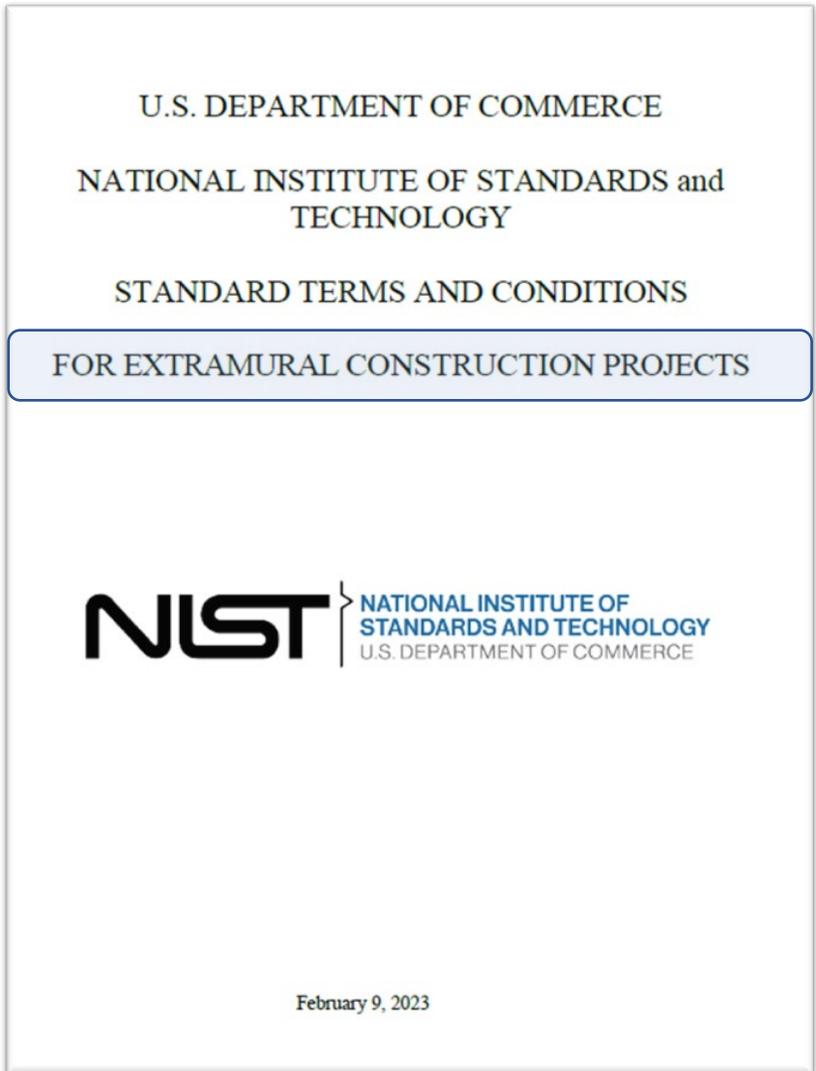
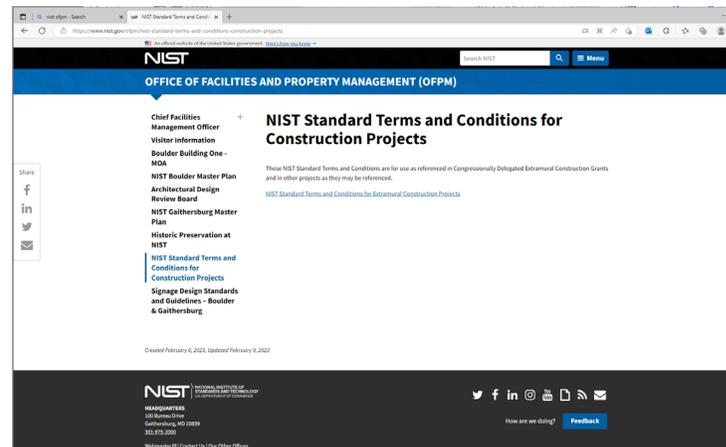


For Technical Matters

- Design
- Property
- Construction

Federal Program Officer (FPO)
Robert J. Slocum, PE
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NIST OFPM



OFPM - Office of Facilities and Property Management

DCD - Design and Construction Division

G. Budget

The NIST-approved budget incorporated into this Award is the budget plan for the Project. NIST has no obligation to provide any additional funding in connection with the Award.

The Recipient must notify NIST of a deviation from the budget in accordance with 2 CFR § 200.308 (Revision of budget and program plans). For construction, the recipient must request prior written approval promptly from NIST for budget revisions whenever the following applies:

1. The revision results from change in the scope or the objective of the project or program.
2. The need arises for additional Federal funds to complete the project.
3. A revision involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E of the Uniform Guidance

The Recipient must submit all requests to ugam@nist.gov for Program Officer concurrence and Grants Officer approval. A final determination on requests for budget revision will be issued in writing by the NIST Grants Officer.

If prior written approval is not required under 2 CFR § 200.308, the Recipient may, without requirement, request the review of the Grants Officer for guidance on proposed revisions to the budget.

The recipient must notify NIST of any program income for consideration and budget accommodation in accord with the 2 CFR § 200.307 (Program income).

H. Application and Award Acceptance

By accepting this Award, the Recipient's authorized representative hereby reaffirms and states that:

1. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the Federal award date;
2. The Application was, as of the date of submission and the Federal award date, duly authorized as required by local law by the governing body of the Recipient; and
3. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted as part of the Application (including assurances submitted through the System for Award Management (SAM.gov)).

Acceptance of the Award is established by any action on the part of the Recipient

Report Change in Scope or Prior Approved Cost (change orders later)

Record Notice of Federal Interest

Disclose all easements, rights of way, and encumbrances

the FOIA, contents of Applications and other information submitted by applicant and Recipient may be released in response to a FOIA request. The Recipient should be aware that NIST may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9 (Confidential commercial information), the Recipient should identify any information it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

M. Audit

The Recipient must comply with the audit requirements set out as subpart F to 2 CFR part 200 (Audit Requirements) and in Section D. of the DOC Standard Terms and Conditions. Generally, if the Recipient expends \$750,000 or more in Federal awards during the Recipient's fiscal year, the Recipient must have a single or program-specific audit conducted for that fiscal year.

N. Definitions

Capitalized terms and acronyms used but not otherwise defined in these NIST Construction STCs have the meaning ascribed to them in 2 CFR § 200.1 (Definitions).

O. Standard Terms

The following standard terms apply to this Award:

1. Compliance - The Recipient shall comply, and must require each subrecipient or contractor, including lower tier subrecipients or subcontractors, to comply with all applicable Federal, state, and local laws and regulations.
2. Notice of Federal Interest - The Recipient holds grant funds and any property acquired or improved with NIST assistance in trust for the public purposes of an Award. The Recipient's obligation to the Federal Government continues for the estimated useful life of the Project, as determined by NIST, during which NIST retains an undivided equitable reversionary interest (the Federal Interest) in property acquired or improved, in whole or in part, with NIST investment assistance. The requirement that property purchased or improved with Federal funds continue to be used for the original statutory purpose for which it was acquired is embodied in the Uniform Guidance at 2 CFR §§ 200.310 - 316 (Property Standards); see herein Part II B.1. (Title).
3. Land, Easements, and Rights of Way - The Recipient must disclose all pre-existing or contemplated encumbrances to the Program Officer as they pertain to real property that will be acquired or contributed by a recipient or subrecipient pursuant to a DOC construction award. Unless otherwise determined by the Grants Officer, NIST will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of, or the Federal Interest in, the project during its estimated useful life. Unless otherwise provided for in the award, prior to grant of the award and commencement of construction, or when requested by the operating unit, the Recipient

must furnish evidence, satisfactory in form and substance to the Program Officer, that title to real property is vested in the recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.

4. Relocation Assistance - The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-646; 42 U.S.C. § 4601 et seq.), are applicable to the Recipient of assistance from NIST. This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance funds.
5. Maintenance - The Recipient agrees that, for the estimated useful life of the facility funded with the Award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by the Award and in accordance with the terms, conditions, requirements, and provisions of the Award. If NIST determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, NIST shall have the right to terminate this award for cause and pursue any other remedies allowed by law. See 2 CFR § 200.311 (Real property).
6. Energy Efficiency - The Recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.
7. Tribal Employment Rights Ordinances - NIST recognizes Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under the applicable cost principles set out in 2 CFR Part 200, Subpart E.
8. Signs - The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NIST that identifies the project and indicates that the project is federally funded. The Recipient will obtain the prior written approval of the Federal Program Officer prior to erecting or otherwise posting any signage referencing NIST and/or the U.S. Department of Commerce. NIST may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information that is acceptable in form and substance to NIST.

Project Management Conference (today!)

Provide and execute an energy efficiency plan, e.g. LEED, energy code, org. policy, etc.

See Award for Signage Guidelines;
See EEO for Posters

<https://www.eeoc.gov/poster> AND
<https://www.dol.gov/agencies/ofccp/posters>

P. Project Management Conference

Shortly after approval of the award, NIST will contact the Recipient to arrange a project management conference. The purpose of the project management conference is to explain to the Recipient its post-approval responsibilities for administration of the award, including its responsibilities with respect to the terms and conditions of the Award and applicable Federal requirements. Whenever practical, the project management conference will be held where the Recipient's authorized representative, architect/engineer, attorney, and possibly the recipient's financial representative may attend.

Q. Protection of Whistleblowers

This award is subject to the DOC Standard Terms and Conditions. Section F.05 of the DOC Standard Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855.

forego the filing of a public notice of the Federal Interest. No alternative will alter the trust relationship by which the recipient holds title (see 2 CFR § 200.316 (Property trust relationship)).

3. **Insurance** - The Recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. See 2 CFR § 200.310 (Insurance coverage).
4. **Lease** - Leasing or renting of facilities or real property acquired in whole or in part with NIST grant funding is prohibited unless specifically authorized in writing by NIST. The Recipient agrees that any leasing or renting of any facilities or property acquired in whole or in part with NIST grant funding will be subject to the following:
 - a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
 - b. That said lease arrangement is for adequate consideration;
 - c. That said lease arrangement is consistent with applicable NIST requirements concerning but not limited to nondiscrimination and environmental compliance; and
 - d. That all revenue derived from said leasing arrangement shall be reported to the Program Officer for consideration by the Grants Officer and budget accommodation in accord with the OMB Uniform Guidance § 200.307 (Program income).
5. **Eminent Domain** - The Recipient will use funds solely for the authorized purpose of the Project. Pursuant to Executive Order 13406, "Protecting the Property Rights of the American People," the Recipient agrees:
 - a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
 - b. Not to accept title to land, easements, or other interests in land acquired by the exercise of any power of eminent domain for use in connection with the Project for such purposes. The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without the prior written consent of NIST is an unauthorized use of the Project.
6. **Property Management** - Part I.L.1 of these NIST Construction STCs requires the Recipient to agree that, for the estimated useful life of the facility funded with the Award, the project will be properly and efficiently administered, operated and maintained, for the purpose authorized by the award and in accordance with the Terms

Insure Project and Property (more on STC page 17)

Procurement

1. By State
2. By Other Non-Federal

(CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note et seq.);

13. Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations");
14. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.);
15. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344);
16. Rivers and Harbors Act (33 U.S.C. § 407) The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001);
17. Executive Order 13112 (Invasive Species, February 3, 1999); and
18. Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.).

Post Award, the Recipient must remain cognizant of environmental information provided with the application of the project. Environmental information new or different from the application must be conveyed to the Program Officer and addressed with the appropriate agency as soon as it becomes available throughout the project.

The Recipient must maintain the status of all local, state and Federal permits of an environmental nature required of the project; e.g., USACE, U.S. Environmental Protection Agency (EPA), Coastal Zone Management/Shoreline Management, Air Quality, State Environmental Policy Act, NPDES). The Recipient must provide the Program Officer with copies of any such permits and ongoing and related correspondence of significance.

D. **Contract Standards**

The Recipient must comply with the following procurement standards for all contracts issued pursuant to the Award:

1. **Procurement by States** – When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. A State must comply with 2 CFR § 200.323 (Procurement of recovered materials) and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.327 (Contract provisions). See 2 CFR § 200.317 (Procurements by states).
2. **Other Non-Federal Entities** - All other non-Federal entities, including subrecipients of a State, must follow 2 CFR §§200.318 (General procurement standards) through 200.327 (Contract provisions), which are outlined below.

Code of Federal Regulation



For CFR Reference

Copy the Section

Search 2 CFR § 200.317



The screenshot shows the eCFR website interface. At the top, there is a navigation bar with links for 'Browse', 'Search', 'Recent Changes', 'Corrections', 'Reader Aids', and 'My eCFR'. A search bar on the right contains the text 'Search the eCFR'. Below the navigation bar, the 'Code of Federal Regulations' logo is displayed, along with the tagline 'A point in time eCFR system' and the National Archives seal. A blue horizontal bar highlights the 'Title 2' section. Below this, a light blue banner indicates 'Displaying title 2, up to date as of 5/02/2023. Title 2 was last amended 3/01/2023.' with a link to 'view historical versions'. A search bar below the banner contains the text 'Enter a search term or CFR reference (eg. fishing or 1 CFR 1.1)'. The breadcrumb trail shows 'Title 2 / Subtitle A / Chapter II / Part 200 / Subpart D / Procurement Standards / § 200.317'. The main content area is titled 'ECFR CONTENT' and displays the section '§ 200.317 Procurements by states.' with a brief description: 'When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.'

3. General Procurement Standards - The Recipient shall adhere to the procurement standards contained in 2 CFR § 200.318 (General procurement standards). In particular, the Recipient shall make awards only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed procurement. Additionally, the Recipient must maintain a written code of conduct, which shall govern the actions of individuals, such as any officer, employee or member of the board of directors or other governing board of the recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family, significant others, partners, and other persons directly connected to such persons by law or through a business arrangement.

4. Competition - All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of 2 CFR § 200.319 (Competition). The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State, local, or Tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. The non-Federal entity must have written procedures for procurement transactions. The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

5. Methods of Procurement - A non-federal entity must adhere to the methods of procurement set forth in 2 CFR § 200.320 (Methods of procurement to be followed). The recipient shall maintain records sufficient to detail the history of each procurement transaction related to the project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for determining the contract price. See 2 CFR § 200.334 (Retention requirements for records).

6. Small and Minority Businesses - As set forth in 2 CFR § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), non-federal entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

7. Procurement of Recovered Materials - In accordance with 2 CFR § 200.323 (Procurement of recovered materials), a recipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part

§ 200.318 a. procedures, b. oversight, g. value engineer, h. responsible contractor i. document

§ 200.324 a. independent estimate prior to bid, d. cost plus % and % of construction cost contracts not to be used

Execute a SMB plan

Submit ALL CO's quarterly on AIA Document G701TM-2017 or other approved.

Submit ANY CO prior when

- > SAT (\$250,000) or
- > 25% increase in value or
- > Federal funding in 424C

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

8. Contract Cost and Price - The Recipient must adhere to the cost and contract pricing requirements set forth in 2 CFR § 200.324 (Contract cost and price). In particular, a Recipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (currently \$250,000), including contract modifications. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used, per OMB Uniform Guidance 2 CFR § 200.324(d).

9. Change Orders - The Recipient shall submit all contract change orders for review and for approval by NIST, even those that the operating unit is not participating in any costs associated with the change or if the contract price is to be reduced. Necessary supporting statements, estimates, specifications, and plans should be attached. Absent express legal authority, NIST may not approve change orders that change the purpose and intent (the scope) of the project. Change orders that minimally or incidentally increase the cost of the project, but do not change the project scope, may be approved by NIST, provided that either:

- a. The Recipient has agreed in writing to fund the additional cost, in which case all work to effect the change order will be an ineligible project cost and no federal funds will be used to pay for it; or
- b. There are sufficient funds remaining in the award budget to cover the change order without jeopardizing the completion of the project.
- c. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.
- d. A change order may also be required at project completion to establish final quantities for unit price contracts.

10. Bonding - For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$250,000), the bonding requirements set forth in 2 CFR § 200.326 (Bonding requirements) shall apply. NIST may accept the Recipient's or subcontractor's bonding policy and requirements if NIST or the pass-

through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements will apply:

- a. **Bid Bond.** If the Award exceeds the Simplified Acquisition Threshold (currently \$250,000) a bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. See 2 CFR § 200.326 ("Bonding requirements").

- 11. Wage rate requirements - This Award does not include wage rate requirements.
- 12. **The Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708)** - Which provides work hour, health and safety standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of each contract in an amount greater than \$100,000 that is entered into under legislation subject to Reorganization Plan.
- 13. **Occupational Safety and Health Act of 1970 (Public Law 91-596)** - Which serves to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act.
- 14. **Specific Requirements for Contractors and Subcontractors** -The Recipient is responsible for ensuring that it includes applicable NIST compliance provisions, as contained in these NIST Construction STCs and other applicable Terms and Conditions of the award, including the contract provisions required by 2 CFR § 200.327 (Contract provisions), in all contracts let by the recipient under a NIST construction award. The Recipient is also responsible for ensuring that, in turn, each contractor under a NIST construction award includes the applicable NIST compliance provisions in all subcontracts awarded under the prime contract. Additionally, the Recipient must ensure that each contractor and subcontractor agree to comply with all applicable Federal, State, and local requirements pertaining to the project.

E. Build America, Buy America

- 1. **Buy America Requirements** - Pursuant to the Infrastructure Investment and Jobs Act, 2021, Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA), including the Build

Bid Bond when bid > SAT (\$250,000) for 5% of bid Price
Performance Bond for 100% of contract price
Payment Bond for 100% of contract price

Work and Safety Standards in Prime and Subcontracts (more on STC page 24 and 25)

100% Iron & Steel 55% by cost for all manufactured products
0% trade tools and equip

America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52 (BABA), as well as guidance provided by Memorandum for Heads of Executive Departments and Agencies, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Executive Office of the President, Office of Management and Budget (April 18, 2022) (OMB M-22-11), recipients are hereby instructed that none of the funds provided under this Award may be used for a project for infrastructure unless:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials¹ are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The requirements of this subsection must be included in all subawards and contracts, including all contracts and purchase orders for work or products pursuant to this program, as applicable. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

- 2. **Buy America Waivers** - When necessary, recipients may apply for, and DoC may grant, a waiver from the Buy America domestic content procurement preference applicable to this Award. When DoC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America domestic content procurement preference in any case in which DoC determines that:
 - a. applying the domestic content procurement preference would be inconsistent with the public interest;

¹ Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

- d. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

F. Design

The Recipient shall ensure that the design of the NIST-funded construction project meets or exceeds the following:

1. Compliance with the building permit and trade permit requirements of the appropriate authority having jurisdiction. The design managed by the Recipient will comply with the building codes, standards, and other requirements applicable to the project; consistent with the provisions of and to the extent required by 40 U.S.C. § 3312(b);
2. Consideration of all requirements of a State or a political subdivision of a State, which apply to building construction or alteration, zoning laws and ordinances consistent with the provisions of and to the extent required by 40 U.S.C. § 3312(c); and
3. Executive Order 13717, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction", which requires that new buildings constructed with Federal assistance comply with the earthquake-resistant design provisions of the 2015 editions of the International Building Code (IBC) or the International Residential Code (IRC), nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent codes, consistent with the provisions of and to the extent required by 40 U.S.C. § 3312.

G. Architect/Engineer Agreement

The Recipient shall ensure design services and related contracts meet the following:

1. The Recipient's architect/engineer agreement shall provide for all services required by the Recipient for the design and engineering phases of the project. Appropriate standards, guidance, or forms developed by professional organizations, such as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the recipient does not have standard procurement documents;
2. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 2 CFR §§ 200.317 (Procurements by states) through 200.327 (Contract provisions). The "cost-plus-percentage-of-cost" and "percentage-of-cost" methods of contracting are specifically prohibited. See 2 CFR § 200.324(d).

Provide code with Seismic Safety compliance

Any construction contract other than design/bid/build, lump sum, or unit price requires a procurement plan be provided and a design professional be secured

3. The architect/engineer agreement shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site to determine if the work is proceeding in accordance with the approved plans and specifications; and
4. All architect/engineer contracts awarded by the Recipient shall include a provision to the effect that the recipient, the operating unit, the Comptroller General of the United States, the Inspector General of the Department of Commerce (OIG), or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer that are pertinent to the award in order to verify the recipient's compliance with award requirements. See also 2 CFR § 200.327, (Contract provisions) for a listing of the required provisions for contracts awarded by recipients pursuant to a NIST financial assistance award (including construction awards).

H. Alternate Methods of Construction Procurement

The Recipient may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). If an alternate method is used, the Recipient shall submit to NIST for prior approval a construction services procurement plan. In this situation, the recipient must secure a design professional to oversee the process.

I. Services Performed by Recipient Forces

1. The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time ("in-house" or "force account" construction). If the Recipient elects to use force account labor, the NIST Federal Program Officer or the NIST Grants Officer will furnish specific guidance to the recipient that must be followed for the cost for such work to be eligible for reimbursement from NIST, under the Award.
2. The NIST Federal Program Officer, in consultation with the NIST Grants Officer, must review the Recipient's plan for prior approval if this method is to be elected by the Recipient.
3. Due to the complexity of monitoring in-house construction and the limited staff available to NIST to perform the monitoring, in-house construction is strongly discouraged. Generally, the in-house method of construction may only be approved if:
 - a. The recipient has a special skill required for the construction (e.g., construction of unique Indian structure); or

- b. Substantial cost savings can be demonstrated; or
- c. The Program Officer Grants Officer are satisfied that the Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors (such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area); or
- d. It has been determined by the Program Officer and by the Grants Officer that special circumstances require its use to successfully complete the project.

J. Bid Documents

Until NIST has reviewed the Recipient's proposed contracts and related procurement documents and determined they comply with the Award, the Recipient will proceed at its own risk regarding the allowability of any costs incurred.

The Recipient must submit plans, specifications, and related documents for review and concurrence prior to advertising for bids, per 2 CFR 200.325. This review is to ensure compliance with the Award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, or compliance with required codes or ordinances, which responsibility rests with the recipient. See also 2 CFR § 200.325(a), regarding Federal awarding agency review. At a minimum, NIST will review documentation regarding the following:

1. **Environmental Compliance.** NIST will ensure that environmental project reviews are conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 et seq., as implemented under 40 CFR chapter V) (NEPA). NIST will provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, as specified in 40 CFR § 1506.6(b).
2. **Civil Rights Compliance.** Discrimination by a grant recipient is prohibited in accordance with the following authorities:
 - a. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) and the DOC's implementing regulations at 15 C.F.R. Part 8;
 - b. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and the DOC's implementing regulations at 15 CFR Part 8b. For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR Part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR Part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible

Provide procurement documents prior to advertisement

NEPA/NHPA (next slide)

Notify NIST prior to award if ANY of these apply

Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

- c. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) and the Department's implementing regulations at 15 CFR Part 20;
- d. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and
- e. Other non-discrimination Federal statutes, regulations, and Executive Orders, as applicable.

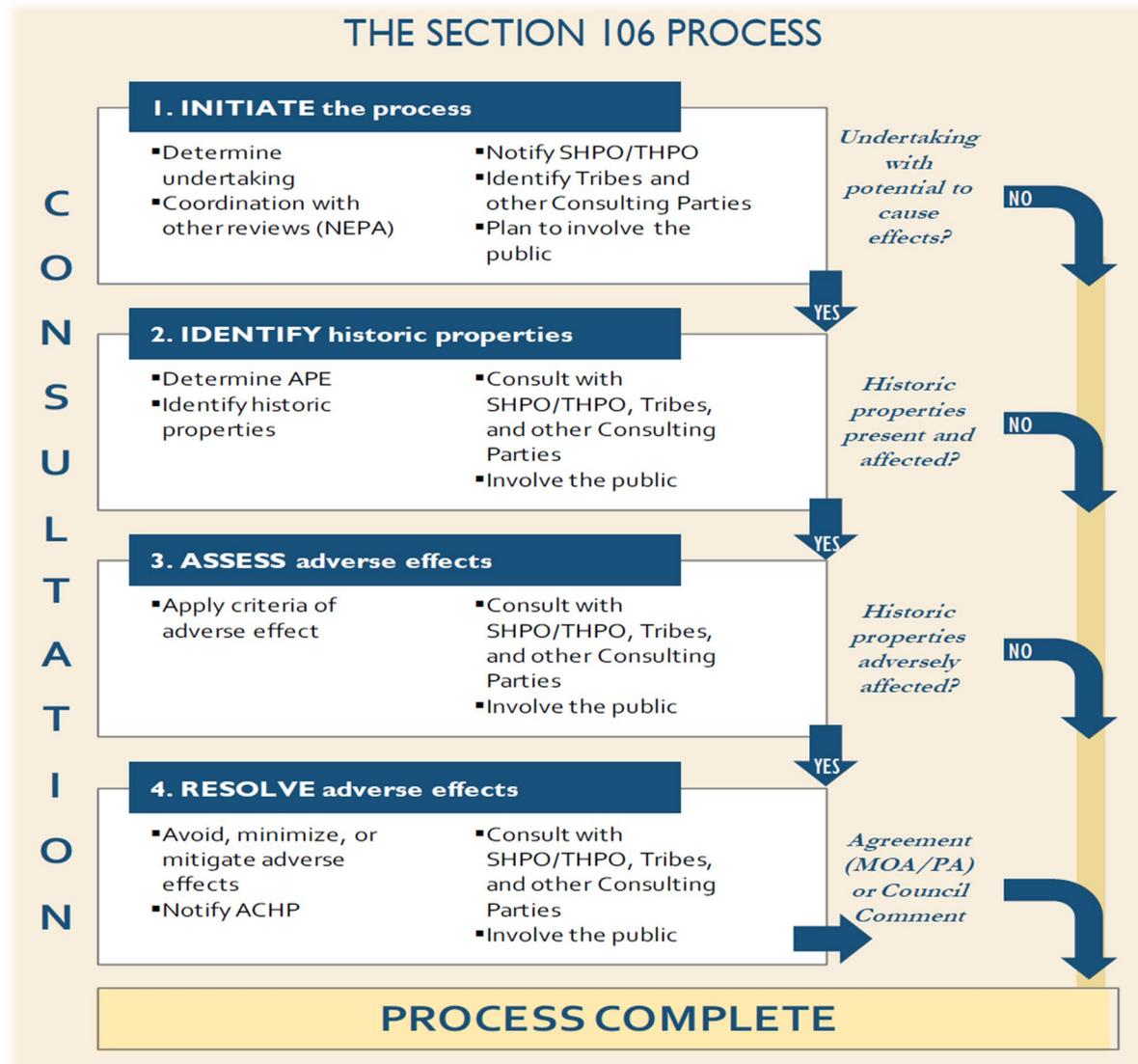
K. Award Documents

As provided in 2 CFR § 200.325(b), NIST may, upon request, review proposed contracts and related procurement documents prior to award if:

1. The procurement is expected to exceed the Simplified Acquisition Threshold (currently set at \$250,000), and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
2. The procurement is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
3. The proposed contract modification changes the scope of the contract or increases the contract amount by more than the Simplified Acquisition Threshold;
4. The Recipient's procurement procedures and operations fail to comply with the procurement standards set out in 2 CFR part 200; or
5. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.

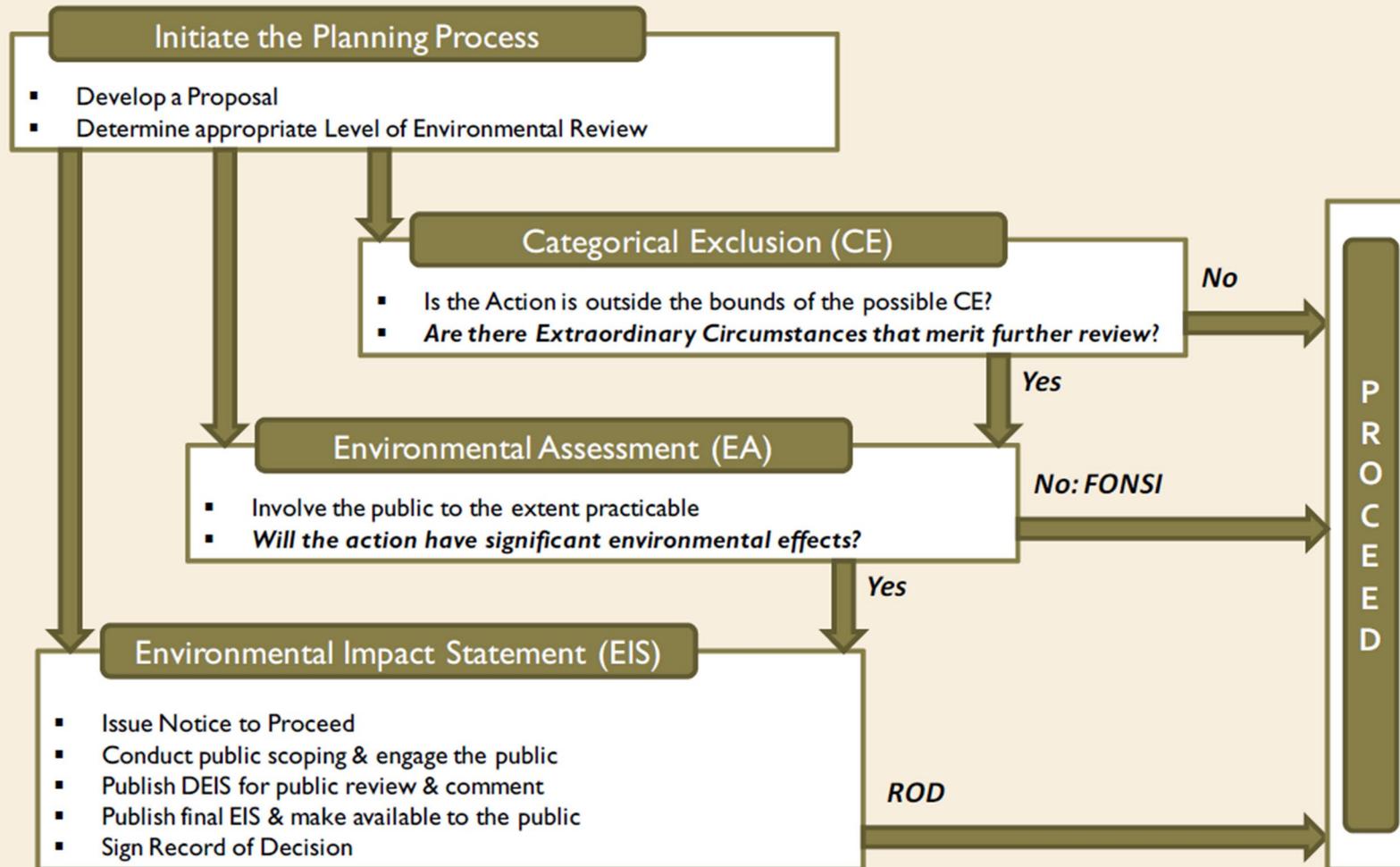
L. Protest Procedures

In accordance with 2 CFR § 200.318(k), the non-Federal entity alone and in accordance with good administrative practice and sound business judgment is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of a non-Federal entity's procurement under a NIST financial assistance award. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. NIST will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.



NIST
Historic Preservation Officer

THE NEPA PROCESS



NIST
NEPA Coordinator

M. Construction

The Recipient and any subrecipient or non-Federal entity, must, in addition to other statutory and regulatory requirements detailed in these NIST Construction STCs and the assurances made to NIST in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal laws (and the regulations issued thereunder), Executive Orders, OMB Circulars, OMB Uniform Guidance, and local law requirements.

1. **Early Construction Start** - to be eligible for reimbursement, NIST must determine that all contracts necessary for design and construction of the project facilities have been awarded in compliance with the Terms and Conditions of the award. If construction commences prior to the NIST determination, the Recipient proceeds at its own risk and at the risk of not being reimbursed by NIST for such activities, unless and until the operating unit's review and concurrence.
2. **Delayed construction start** - if significant construction (as determined by NIST) is not commenced within two years of the Award Date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by NIST), whichever is later, this Award may be suspended by a written notification issued by the Grants Officer and may be terminated if NIST determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. See 2 CFR §§ 200.339 – 200.340.
3. **Throughout Construction** - The Recipient is responsible for:
 - a. Ensuring project completion in accordance with approved plans and specifications;
 - b. Monitoring project progress and reporting progress to the operating unit;
 - c. Providing for required construction permits and adequate construction inspection;
 - d. Promptly paying costs incurred for the project purposes, including appropriate bonding costs and insurance premiums;
 - e. Monitoring contractors' compliance with Federal, State, and local requirements; and
 - f. Constructing and maintaining in good condition throughout the construction period, a sign or signs, at the project site in a conspicuous place indicating that the Federal Government is participating in the project.
 - g. Monitoring compliance of a daily Quality Assurance Checklist (or similar tool), documented electronically or in hard copy, as prepared by the Recipient, their designer, or contractor;

Construction

Site visits quarterly during construction

Project reporting quarterly

- g. Monitor quality daily
- h. Monitor safety daily
- i. Report quarterly

- h. **Monitoring compliance** of all applicable safety programs and procedures, as prepared by the Recipient, their designer, or contractor; and
 - i. **Report contractor work hours with the number of reported safety incidents monthly.** The means of monitoring and reporting may be incorporated into the safety program(s) referenced in h., immediately above.
4. **Final Inspection for Acceptance** - The Recipient will schedule a final inspection when all construction is completed, the architect/engineer has conducted a final inspection, and any deficiencies have been corrected. Representatives of the Recipient, the architect/engineer, and the contractor(s) will make the final inspection. NIST must be given advance notice of the final inspection to allow NIST a representative to participate.

N. Site Visits

The Program Officer, Grants Officer, and/or NIST leadership and advisors may visit the Recipient and the project site throughout the project. Shortly after the Award is issued, the Program Officer may arrange for site visits with the Recipient. The Federal Program Officer will remain available to the Recipient before, during, and after each visit for any comments, questions, concerns, or official documentation.

O. Reporting

The Recipient must initiate, execute, convey, and maintain reports as required throughout these NIST Construction STCs, to include:

1. **Performance (Technical) Reports** - must be submitted in accordance with the procedures set forth in 2 CFR §200.329 (Monitoring and reporting program performance), as applicable, and as indicated below. Failure to submit required reports in a complete, accurate, and timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding; or other appropriate enforcement action. See section A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions) of the DOC Standard Terms and Conditions.

Performance (Technical) Reports must be submitted on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31 or any portion thereof. Reports are due no later than 30 calendar days following the end of each reporting period. A final report must be submitted no later than 120 calendar days after the expiration of the period of performance.

All reports must be submitted to greports@nist.gov within the prescribed timeframes identified above. The Recipient organization name, NIST award number, and reporting period must be included in the email subject line. The Recipient contact information should be included in the body of the message. No other correspondence may be sent

through this mailbox; timely responses to any other inquiries received in this mailbox are not guaranteed. The mailbox will not be used for any other purpose *except* for purposes identified above.

The Recipient is encouraged to contact the Program Officer with any questions regarding report completion and submission prior to the deadline to allow for complete, accurate, and timely submission of required reports. The Recipient must fully document and disclose the following for each reporting period:

- a. All project expenditures;
 - b. All procurement actions;
 - c. Recipient compliance with these NIST Construction STCs of the Award, including but not limited to the Award's Buy America requirements;
 - d. Contractor compliance with all applicable local, state, and Federal requirements, including but not limited to the Award's Buy America requirements;
 - e. Such records as identified in 2 C.F.R. § 200.334 (Retention Requirements for Records) or in these NIST Construction STCs;
 - f. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - g. An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - h. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or higher than estimated unit costs.
2. Interim Performance Reporting - Between the required reporting dates, events may occur, such as problems, delays, or adverse conditions, that will materially affect the ability of the Recipient to attain program objectives, prevent time schedules and goals from being met, or preclude the attainment of project work units by established time periods. The Recipient shall inform the Program Officer as soon as possible of any event which has or that is expected to have a material impact on the project, including any favorable developments that enable the recipient to meet time schedules and goals sooner than anticipated or produce more work than originally projected. The Recipient must notify the operating unit of such events in the most expeditious way possible and then, if the original notification was not in writing, provide the operating unit with written notification, including a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. The Program Officer, in consultation with the Grants Officer, will review and respond appropriately to documentation disclosing these events.
3. Federal Financial Reports - in accordance with 2 CFR § 200.328 (Financial reporting),

Standard report, simply report N/A when no change

Property reporting
Annual for three years
Every five years thereafter

the Recipient must submit a Federal Financial Report (Form SF-425) on a quarterly basis not later than 30 calendar days following March 31, June 30, September 30, and December 31, or any portion thereof. A final Form SF-425 must be submitted no later than 120 calendar days after the expiration of the period of performance.

All reports must be submitted to greports@nist.gov within the prescribed timeframes identified above. The Recipient organization name, NIST award number, and reporting period must be included in the email subject line. The Recipient contact information should be included in the body of the message. No other correspondence may be sent through this mailbox; timely responses to any other inquiries received in this mailbox are not guaranteed. The mailbox will not be used for any other purpose *except* for purposes identified above. Noncompliance with the financial reporting requirements may result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments, disallowance of costs or termination of an award.

Semiannual reporting may be considered at such time financial reports or other circumstances dictate.

4. Property - For Real Property, in accord with § 200.330 (Reporting on real property) the Recipient must provide annual reporting for the first three years of the Award and thereafter reporting every five years for Real Property that has an estimated useful life (*i.e.*, NIST retains a Federal Interest) of 15 years or longer. For Real Property with an estimated useful life of less than 15 years, the Recipient must provide annual reporting to NIST. Each report may affirm the previously reported status, provided such status remains accurate and acceptable to NIST.
5. Records as requested – Throughout the duration of the project, the Program Officer or the Grants Officer may require documentation, e.g., Project Progress Reports, Buy America, etc. See 2 CFR § 200.337 (Access to records).
6. Government Performance and Results Act - In addition to required Project progress reports, NIST may require the Recipient to report on Project performance beyond the end date of the period of performance for Government Performance and Results Act (GPRA) or other purpose(s). In no case will the Recipient be required to submit any GPRA report more than ten years after the date of Award closeout. Data used by the Recipient in preparing reports must be accurate and, whenever possible, from independent sources. See 13 CFR § 302.16 (Accountability).

P. Cost Sharing

This Award does not include a Cost Sharing requirement.

Q. Termination Actions

In accordance with 2 CFR § 200.340 (Termination), this Award may be terminated in whole or in part as follows:

1. Termination by NIST for the Recipient's failure to comply with the Terms and Conditions of the Award. NIST may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award. *See also* Section A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions) of the DOC Standard Terms and Conditions.
2. Termination upon mutual agreement. NIST and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, NIST and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
3. With any Award wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.344 (Closeout) and 200.345 (Post-closeout adjustments and continuing responsibilities).

R. Project Closeout

As defined at 2 CFR § 200.1, Project Closeout is the process by which NIST verifies all applicable administrative actions and all required work of the Award have been completed and takes actions as described at 2 CFR § 200.344 (Closeout). In the context of a NIST construction award, Project Closeout generally begins with the Recipient's acceptance of the Project from the contractor(s).

1. **Final construction related reporting** – the Recipient must submit the following documentation to NIST within the closeout period:
 - a. A written certification that all costs charged against this Award (Federal and non-Federal shares, as applicable) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient's records;
 - b. An executed certificate of final acceptance signed by the Recipient and the Recipient's Architect/Engineer.
 - c. The Recipient's certification that its current audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse;
 - d. Other documentation as may be required by NIST.
2. **Final reporting deadline** - the Recipient must submit, no later than 120 calendar days after the end date of the Period of Performance, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 120-calendar day submission period upon a written request from the Recipient.

← *Closeout procedure*



QUESTIONS?