

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**MEMORIAL SLOAN-KETTERING CANCER
CENTER CLAIMED FEDERAL
REIMBURSEMENT FOR UNALLOWABLE
EXTRAMURAL CONSTRUCTION COSTS
RELATED TO A
NATIONAL INSTITUTES OF HEALTH
RECOVERY ACT GRANT**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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**James P. Edert
Regional Inspector General
for Audit Services**

July 2014
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Office of Inspector General

<https://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

Memorial Sloan-Kettering Cancer Center claimed some unallowable extramural construction costs related to a National Institutes of Health Recovery Act grant.

WHY WE DID THIS REVIEW

Under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, the National Institutes of Health (NIH) received approximately \$1 billion to construct, repair, or renovate existing non-Federal research facilities (known as “extramural construction”). Previous Office of Inspector General reviews found that NIH implemented suitably designed internal controls over the awarding and monitoring of Recovery Act funds for this construction. We are now conducting a series of reviews to test the operating effectiveness of those controls. This review covers extramural construction funds awarded to Memorial Sloan-Kettering Cancer Center (Sloan-Kettering) under NIH grant number 1C06RR029910-01 (the grant).

The objectives of this review were to determine whether Sloan-Kettering (1) claimed allowable extramural construction costs, (2) procured goods and services, (3) submitted quarterly Recovery Act reports and annual NIH progress reports, and (4) met milestone dates for project completion, in accordance with Federal requirements and the terms of the grant.

BACKGROUND

The NIH is the steward of medical and behavioral research for the nation. Its mission is science in pursuit of fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to extend healthy life and reduce the burdens of illness and disability. Research supported through the issuance of grants and cooperative agreements enable NIH to fulfill its mission to make medical discoveries that improve health and save lives.

Nonprofit organizations in receipt of NIH grant funds must comply with Federal cost principles in 2 CFR part 230, *Cost Principles for Non-Profit Organizations* (Office of Management and Budget Circular A-122), the terms and conditions of the award, and the *National Institutes of Health Grants Policy Statement*. Specifically, grantees must ensure that expenditures submitted for Federal reimbursement are allowable. In addition, grantees must document the basis for contractor selection, justification for lack of competition when competitive bids are not obtained, and the basis for award cost or price for all procurement actions that exceed \$100,000. Finally, grantees must meet Recovery Act and NIH reporting requirements and milestone dates for project completion.

Sloan-Kettering is a nonprofit organization with facilities located in New York and New Jersey. NIH awarded Sloan-Kettering Recovery Act extramural construction funds totaling \$14,999,999 under the grant, which was effective April 1, 2010. The funding was provided to complete construction and equip a research laboratory located at Sloan-Kettering’s Zuckerman Research

Center in New York, New York. Sloan-Kettering was required to substantially complete the project by November 13, 2012.

WHAT WE FOUND

Of the \$5,508,046 in Sloan-Kettering's extramural construction costs that we reviewed, \$5,381,630 was allowable. However, the remaining costs, totaling \$126,416, were unallowable. Specifically, Sloan-Kettering claimed costs for the construction of a tunnel/service corridor (\$120,880) and moving services (\$5,536) that did not benefit the grant.

Sloan-Kettering procured goods and services in accordance with Federal requirements and the terms of the grant. Also, as of the reporting period ending March 31, 2013, Sloan-Kettering met all Recovery Act and NIH reporting requirements. Finally, Sloan-Kettering had met the milestone date of November 13, 2012 for substantial project completion.

WHAT WE RECOMMEND

We recommend that NIH require Sloan-Kettering to refund \$126,416 to the Federal Government.

MEMORIAL SLOAN-KETTERING CANCER CENTER COMMENTS

In written comments on our draft report, Sloan-Kettering concurred with our findings and described corrective actions it took to address our recommendation.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In an email dated June 26, 2014, NIH stated that it had no concerns with the corrective actions described by Sloan-Kettering.

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INTRODUCTION

WHY WE DID THIS REVIEW

Under the American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act), enacted February 17, 2009, the National Institutes of Health (NIH) received approximately \$1 billion to construct, repair, or renovate existing non-Federal research facilities (known as “extramural construction”). Previous Office of Inspector General reviews found that NIH implemented suitably designed internal controls over the awarding and monitoring of Recovery Act funds for this construction.¹ We are now conducting a series of reviews to test the operating effectiveness of those controls. This review covers extramural construction funds awarded to Memorial Sloan-Kettering Cancer Center (Sloan-Kettering) under NIH grant number 1C06RR029910-01 (the grant).

OBJECTIVES

The objectives of this review were to determine whether Sloan-Kettering (1) claimed allowable extramural construction costs, (2) procured goods and services, (3) submitted quarterly Recovery Act reports and annual NIH progress reports, and (4) met milestone dates for project completion, in accordance with Federal requirements and the terms of the grant.

BACKGROUND

National Institutes of Health

The NIH is the steward of medical and behavioral research for the nation. Its mission is science in pursuit of fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to extend healthy life and reduce the burdens of illness and disability. Research supported through the issuance of grants and cooperative agreements enable NIH to fulfill its mission to make medical discoveries that improve health and save lives.

American Recovery and Reinvestment Act of 2009

The Recovery Act provided NIH with approximately \$1 billion for extramural construction projects. The intended recipients of these awards were institutions of higher education and non-profit organizations throughout the country.

¹ *National Institutes of Health, National Center for Research Resources—Internal Control Review of the Process for Awarding Extramural Construction Grants Under the American Recovery and Reinvestment Act* (A-02-09-02011, issued March 22, 2010); and *National Institutes of Health, National Center for Research Resources—Internal Control Review of the Process for Monitoring Extramural Construction Grants Under the American Recovery and Reinvestment Act* (A-02-09-02020, issued September 16, 2010).

Federal Requirements

Federal regulations (45 CFR 74) provide the uniform administrative requirements for awards to institutions of higher education and other nonprofit and commercial organizations. The allowability of costs incurred by nonprofit organizations are determined in accordance with cost principles contained in 2 CFR part 230, *Cost Principles for Non-Profit Organizations* (Office of Management and Budget Circular A-122), incorporated by reference at 45 CFR § 74.27(a). These cost principles require grantees to ensure that expenditures submitted for Federal reimbursement are allowable.

Policy requirements that serve as the terms and conditions of NIH grant awards are published in the *National Institutes of Health Grants Policy Statement* (Grants Policy Statement). The Grants Policy Statement requires grantees to document: (1) the basis for selecting contractors, (2) justification for the lack of competition when competitive bids are not obtained, and (3) the basis for award cost or price for all procurement actions that exceed \$100,000.

NIH construction grant recipients are required to submit approved copies of their construction schedules to NIH prior to starting construction. In addition, grantees must construct projects in accordance with their grant applications, the terms and conditions of the awards, and the approved plans and specifications (42 CFR § 52b).² Grant recipients are also required to submit quarterly Recovery Act reports on FederalReporting.gov and annual progress reports to NIH, as required under the terms and conditions of the awards.

Memorial Sloan-Kettering Cancer Center

Sloan-Kettering is a nonprofit organization with facilities located in New York and New Jersey. Sloan-Kettering provides patient care, research, and educational programs and is funded primarily by patient service revenues and Federal grants.

NIH awarded Sloan-Kettering Recovery Act extramural construction funds totaling \$14,999,999 under the grant, which was effective April 1, 2010. The funding was provided to complete construction and equip³ a research laboratory located at Sloan-Kettering's Zuckerman Research Center (the research center) in New York, New York.⁴ Sloan-Kettering was required to substantially complete the project by November 13, 2012.⁵

² The approved plans and specifications included a project schedule with milestone dates for project completion.

³ According to the budget approved by NIH, \$10,798,534 was awarded for construction-related activities and \$4,201,465 was awarded for equipment.

⁴ Construction of the research center began in 2002 and occupants first moved into the space in 2006. A second construction phase began in 2006, and involved building and connecting a seven-story structure designed to house a conference center, offices, and a research laboratory. Sloan-Kettering stated that it was forced to cease construction on the second phase before the research laboratory could be completed because of weakening economic conditions.

⁵ NIH defines substantial completion as the time when contract work is complete to the point that the Federal Government may take over the facility and receive beneficial occupancy for the purpose intended.

HOW WE CONDUCTED THIS REVIEW

We reviewed Recovery Act extramural construction expenditures, totaling \$5,508,046, claimed by Sloan-Kettering during the period April 1, 2010, through June 30, 2012, and reviewed Sloan-Kettering's procedures for procuring goods and services. We also reviewed quarterly Recovery Act reports and annual NIH progress reports to determine if the required reports were submitted, and physically observed the research center to determine if the reports accurately reflected the progress of the project.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide 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.

Appendix A contains the details of our audit scope and methodology.

FINDINGS

Of the \$5,508,046 in Sloan-Kettering's extramural construction costs that we reviewed, \$5,381,630 was allowable. However, the remaining costs, totaling \$126,416, were unallowable. Specifically, Sloan-Kettering claimed costs for the construction of a tunnel/service corridor (\$120,880) and moving services (\$5,536) that did not benefit the grant.

Sloan-Kettering procured goods and services in accordance with Federal requirements and the terms of the grant. Also, as of the reporting period ending March 31, 2013, Sloan-Kettering met all Recovery Act and NIH reporting requirements. Finally, Sloan-Kettering had met the milestone date of November 13, 2012 for substantial project completion.

UNALLOWABLE COSTS CLAIMED

Costs allocated to a Federal award are allowable if the costs benefit the grant (2 CFR pt. 230, App. A, § A.4(2)).

Sloan-Kettering claimed \$126,416 for costs that were unallowable because the costs did not benefit the grant. Specifically, Sloan-Kettering claimed \$120,880 for the construction of a tunnel/service corridor designed to connect the research laboratory to the rest of the research center located in an adjacent building. Sloan-Kettering also claimed \$5,536 for moving research center equipment and building materials to areas of the research center outside of the research laboratory space. Sloan-Kettering officials told us that the tunnel/service corridor and moving services costs were charged to the Recovery Act grant in error and should have been paid for with non-Federal funds.

PROCUREMENT PROCEDURES WERE FOLLOWED

The Grants Policy Statement requires that grantees comply with procurement regulations contained in 45 CFR § 74.46.

Sloan-Kettering procured goods and services in accordance with Federal requirements and the terms of the grant.

RECOVERY ACT AND NIH REPORTING REQUIREMENTS WERE MET

Sloan-Kettering was required to report on its use of extramural construction funds not later than 10 days after the end of each calendar quarter (section 1512 of the Recovery Act). The reports were to include, among other things, the total amount of Recovery Act funds received, funds expended, project status, and the estimated number of jobs created or retained. In addition, Sloan-Kettering was required under the terms of the grant award to submit annual progress reports to NIH. The progress reports were to include, among other things, the project status and plans for completion.

As of the reporting period ending March 31, 2013, Sloan-Kettering met all Recovery Act and NIH reporting requirements.

MILESTONE DATES WERE MET

Sloan-Kettering was required to meet milestone dates for project completion.

Sloan-Kettering met all milestone dates for project completion, as documented on its Recovery Act quarterly reports and annual progress reports to NIH. For example, Sloan-Kettering met the milestone date of November 13, 2012 for substantial completion of the research laboratory.

RECOMMENDATION

We recommend that NIH require Sloan-Kettering to refund \$126,416 to the Federal Government.

MEMORIAL SLOAN-KETTERING CANCER CENTER COMMENTS

In written comments on our draft report, Sloan-Kettering concurred with our findings and described corrective actions it took to address our recommendation. Sloan-Kettering's comments are included in their entirety as Appendix B.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In an email dated June 26, 2014, NIH stated that it had no concerns with the corrective actions described by Sloan-Kettering.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered \$5,508,046 in Recovery Act extramural construction costs claimed by Sloan-Kettering for the period April 1, 2010, through June 30, 2012. We also reviewed quarterly Recovery Act reports and annual NIH progress reports to determine if the required reports were submitted, and physically observed the research center to determine if the reports accurately reflected the progress of the project. We did not perform an overall assessment of Sloan-Kettering's internal control structure. Rather, we reviewed only the internal controls designed and implemented to identify, account for, and support expenditures claimed for Federal reimbursement and for procuring goods and services.

We conducted our audit from August 2012 through April 2013 and performed our fieldwork at Sloan-Kettering's offices in New York, New York.

METHODOLOGY

To accomplish our objectives, we:

- reviewed relevant Federal laws, regulations, and guidance;
- reviewed Sloan-Kettering's Recovery Act grant applications and supporting documentation, including the design documents and timeline for completion of the project;
- interviewed Sloan-Kettering personnel to gain an understanding of Sloan-Kettering's accounting system and internal controls over Federal expenditures;
- reviewed Sloan-Kettering's financial policies and procedures;
- reviewed vendor proposals, contracts, and invoices to determine if Sloan-Kettering's Recovery Act expenditures were allowable;
- reviewed procurement documentation to determine whether Sloan-Kettering complied with Federal requirements regarding competitive bidding;
- reviewed the quarterly Recovery Act reports and annual NIH progress reports; and
- performed a site visit to physically observe the progress of the project.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide 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.

APPENDIX B: MEMORIAL SLOAN-KETTERING CANCER CENTER COMMENTS



Memorial Sloan-Kettering
Cancer Center

May 14, 2014

Report Number: A-02-12-02013

James P. Edert
Regional Inspector General for Audit Services
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
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Dear Mr. Edert,

We are in receipt of the draft report referenced above and, as requested in your letter dated April 21, 2014, are providing written comments.

We concur with the finding that Memorial Sloan Kettering Cancer Center ("MSK") claimed \$126,416 of unallowable costs. These costs were for tunnel/service corridor and moving expenses that were incurred as part of the overall construction project, but were charged to the grant in error and should have been paid with non-Federal funds. However, MSK recognized its error and submitted payment requests for additional allowable costs it incurred while completing the construction project that equaled the \$126,416 in unallowable costs.¹ Those additional allowable costs were a complete offset of the unallowable costs. Accordingly, MSK has submitted payment requests for allowable costs totaling the full amount of the grant, \$14,999,999, and NIH is not now due a refund from MSK.

As MSK ultimately received grant payments for allowable costs, we respectfully request that the OIG change the title of its report to indicate that, while MSK initially claimed payment for unallowable costs, it corrected this issue and received payment for allowable costs only.

Thank you for your consideration of our request.

Sincerely,

Eric M. Cottingham, Ph.D.
Senior Vice President, Research and Technology Management

¹ The grant provided \$14,999,999 for the construction of the project. However, MSK spent \$15,365,113 on the construction resulting in an overage of \$365,114 (\$15,365,113 minus \$14,999,999). At least \$126,416 of this overage was for costs that were allowable and could have been charged to the grant. When MSK discovered its mistake of submitting unallowable costs for payment, it substituted allowable costs for those unallowable costs such that it ultimately received \$14,999,999 in reimbursement of allowable costs from NIH.

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NCI-designated Comprehensive Cancer Center