

*U.S. DEPARTMENT OF COMMERCE
Office of Inspector General*



*National Institute of
Standards and Technology*

*Florida MEP
Award No. 70NANB3H2002*

*Final Audit Report No. ATL-18568
March 2009*

Atlanta Regional Office



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INTRODUCTION

In September 2003, the National Institute of Standards and Technology (NIST) awarded Manufacturing Extension Partnership Cooperative Agreement No. 70NANB3H2002 to the Florida Manufacturing Extension Partnership (Florida MEP). The September 2003 award approved funding for the period of August 1, 2003, through July 31, 2004. The award was subsequently amended to extend the award period through June 30, 2007.

During the award period of July 1, 2005, through March 31, 2007, Florida MEP submitted financial reports to NIST claiming total project costs of \$19,133,115. Based on these claims, Florida MEP received federal reimbursements totaling \$5,038,055.

In May 2007, we initiated an audit of Florida MEP to determine whether the recipient complied with award terms and conditions and NIST operating guidelines for MEP centers. The audit covered the 21-month period of July 1, 2005, through March 31, 2007. The primary objective of our audit was to determine whether Florida MEP reported costs to NIST, including costs incurred by subrecipients, that were allowable and in accordance with federal regulations and NIST policy. In addition to costs claimed as being incurred by Florida MEP, we examined cost claims originating at the eight Florida MEP subrecipients and two third-party in-kind contributors.

FINDINGS AND RECOMMENDATIONS

We questioned \$12,623,477 in costs, as follows:

- \$11,394,824 claimed for eight subrecipients who could not provide documentation that their claims were based on actual costs incurred under the subawards;
- \$512,998 in consultant agreements because of lack of adequate supporting documentation and duplication of services;
- \$164,836 in unreasonable and unallowable other direct costs claimed;
- \$99,738 in unallowable claims for third-party in-kind contributions;
- \$57,760 in claimed costs because of unallowable lobbying activities;
- \$[REDACTED] in claimed travel reimbursements as unreasonable costs; and
- \$386,133 as indirect costs associated with the above questioned direct costs.

We also found that Florida MEP used incorrect and misleading calculations to report excess program income. We believe NIST should recover \$2,868,393 in excess federal funds disbursed. A summary of the results of our financial audit is located in Appendix C.

\$11.4 MILLION UNALLOWABLE SUBRECIPIENT COSTS

We questioned \$11,394,824 Florida MEP claimed for costs incurred by eight subrecipients. Florida MEP did not have documentation to support that their claims were based on actual costs incurred under the subaward agreements. Florida MEP was unable to disclose accurate, current, and complete financial results for the eight organizations—a requirement for financial management systems that track and report on federal funds. The primary reason that Florida MEP was unable to disclose the financial results is that the subrecipients did not maintain an adequate financial management system that could adequately track and report costs in accordance with the cooperative agreement's requirements.

The administrative principles in 15 CFR, Part 14 are incorporated by reference into Florida MEP's cooperative agreement with NIST. These requirements flow down to the subrecipients pursuant to 15 CFR, Section 14.5. NIST operating plan guidelines for MEP Centers, issued in March 2005, require all MEP subawards to include the applicable administrative requirements and all general and special award conditions imposed on the recipient. Minimum requirements for recipient and subrecipient accounting systems, as established in 15 CFR, Section 14.21, include

- accurate, current, and complete disclosure of the financial results of each federally-sponsored project or program (Section 14.21(b) (1));
- comparison of outlays with budget amounts for each award (Section 14.21(b) (4)); and
- written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with applicable cost principles and the terms and conditions of the award (Section 14.21(b)(6)).

The eight subrecipients did not have financial management systems that met these requirements. The eight organizations did not establish separate cost centers in their accounting systems to track costs incurred under their agreements with Florida. Rather than tracking and reporting actual costs incurred under their respective subawards, the organizations forwarded financial reports with their normal operating expenses to Florida MEP. Florida MEP then claimed expenses it identified as allowable and included these costs as part of its matching share on its financial status reports to NIST (see table 1).

Table 1. Subrecipient's Costs Claimed by Florida MEP

Subrecipients	Funds Provided by Florida MEP Under Subaward *	Costs Claimed as Cash Match by Florida MEP
University of Central Florida	\$ 0	\$ [REDACTED]
Economic Development Commission of Florida's Space Coast	9,000	[REDACTED]
First Coast Manufacturing Association	11,567	[REDACTED]
South Florida Manufacturing Association	19,250	[REDACTED]
Manufacturing Association of Central Florida	13,575	[REDACTED]
Bay Area Manufacturers Association	16,350	[REDACTED]
Florida Sterling Council	6,150	[REDACTED]
University of North Florida	20,000	[REDACTED]
TOTALS	\$95,892	\$11,394,824

*Florida MEP provided only \$95,892 in subaward funds. This represents less than 1% of the \$11.4 million in total funds claimed by Florida MEP as cost-share.

None of the eight organizations' incorporated the subaward into their financial management system so that the accounting for the award met the minimum requirements described above. For example, none of the eight organizations received the required line-item and object-class budget in their agreements with Florida MEP and, consequently, none of the eight organizations compared outlays with budget amounts—a financial management requirement of the award.

Representatives at seven of the eight organizations stated they do not consider themselves to be subrecipients of Florida MEP. Only representatives from the University of North Florida (UNF) said they considered the university a subrecipient. However, we questioned costs claimed by Florida MEP from UNF because it did not have an adequate financial management system.

NIST's 2005 operating plan guidelines for MEP centers required certain provisions to be included in all subaward agreements. These included identification of NIST MEP cooperative agreement number, program number in the Catalog of Federal Domestic Assistance (CFDA) and notification of the terms and conditions and other award principles that flow down from the NIST Cooperative agreement. We noted that the Florida MEP did not include the NIST CFDA number in any of the subagreements and there was not a complete flow-down of NIST terms and conditions from Florida MEP.

For example, while the identification and reporting of program income is specifically included in Florida MEP operating plan guidelines, Florida MEP did not require its subrecipients to report program income. In addition, the eight organizations did not have written procedures in place to determine if amounts reported to Florida MEP met allowability criteria established by applicable federal cost principles. Instead, Florida MEP determined which of the subrecipients' operating expenses to include as costs associated with the MEP project.

Based on these findings, we questioned all the costs claimed by Florida MEP related to the eight subawards. However, there are two issues related to the subrecipient costs that are secondary to the financial management system issue.

The cooperative agreement's special award condition states that "at least one-half of the recipient's costs share must be in cash." According to 15 CFR 14.2(g), "Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties." We found none of the \$11.4 million claimed as cash match actually involved cash contributions or the outlay of money contributed to Florida MEP. This claimed amount does not qualify as cash match under 15 CFR 14.2(g).

In addition, we tested expenses claimed as cash match for the University of Central Florida, the Economic Development Commission of Florida's Space Coast and the First Coast Manufacturers Association. We found most costs claimed would likely be questioned as unallowable because of noncompliance with the cost principles.

GRANTEE RESPONSE

The grantee disagreed with the draft report findings regarding the questioned cost-share and third-party contributions, stating that the most glaring omission in the draft audit report was its failure to acknowledge or apply the statutory authorization for the MEP program that is applicable to Florida MEP's agreement. According to the grantee, the draft audit report simply ignores the fact that the authorizing MEP statute assigns to Florida MEP the responsibility of establishing that all nonfederal costs are programmatically reasonable and allocable under MEP program procedures.

As support for its position, the grantee cited section 3003(a)(3)(C) of the America COMPETES Act, P.L. 110-69, which was enacted in August 2007, and stated that language in that provision amended the MEP statute to clarify how the MEP center's cost contributions are to be determined. According to the grantee, such a clarification was necessary after prior audits of MEP centers in the 2003 time frame resulted in proposed findings and recommendations that were ultimately found to frustrate the mission, structure, and purpose of the MEP program as conceived by Congress.

The grantee stated that the provision cited above clarifies the nature and classification of nonfederal costs contributed by partnering organizations. The response quotes the legislation, stating that "All non-federal costs contributed by such entities and determined by a Center (emphasis added) as programmatically reasonable and allocable are includable as a portion of the Center's contribution." According to the grantee, this amendment to the MEP statute clearly gives the center the authority for determining which costs are programmatically allocable and reasonable and therefore allowable and that, as evidenced by the documents reviewed by the auditors, Florida MEP reasonably made this determination for each of its partners based on the information reviewed by Florida MEP officials.

The grantee also stated its belief that the draft report was incorrect to conclude that the Florida MEP partners did not have the required financial documentation to support the assistance provided to Florida MEP's program. According to the grantee, each of the partners maintained and made available documents that allow a reasonable finding that costs expended were (1) reasonable, (2) allocable to Florida MEP's mission of assisting small and medium-sized manufacturers in Florida, and (3) allowable pursuant to statutory and regulatory authority, federal cost principles, NIST guidelines, and the terms and conditions of Florida MEP's agreement.

The grantee's complete response is included, without exhibits, as appendix D.

OIG COMMENTS

We reviewed the complete response of Florida MEP. We determined that the findings in the draft report were not refuted by the statements and assertions made by Florida MEP's counsel.

We found that the grantee's conclusion that a change to the MEP statute resulting from the America COMPETES Act clearly places authority for determining the reasonableness and allocability of contributions on the centers is not supported by a straightforward textual analysis of the provision in question. The critical sentence of the relevant change to the MEP statute reads as follows:

All non-Federal costs contributed by such entities and determined by a Center as programmatically reasonable and allocable under MEP program procedures are includable as a portion of the Center's contribution. 15 U.S.C. §278k(c)(3)(C).

There is no question that this provision authorizes centers to make determinations as to the reasonableness and allocability of contributions they receive. That those determinations are not final is evidenced by use of the permissive word "includable," as opposed to mandatory language such as "shall be included" or "must be included." Such determinations must also be made pursuant to MEP program procedures, which explicitly call for the centers to make a determination of what costs to *claim* and not what costs to *allow*, state that the cost principles apply and provide for program review of a recipient's claimed costs, with authority to make final determinations of reasonableness and allowability resting with the government. In light of the foregoing, the only reasonable construction of this sentence is that it recognizes that centers make initial determinations about contributed costs that can be claimed by a center, but that those determinations, pursuant to MEP program procedures, are subject to review by the government and do not mean that the costs must be allowed by the MEP program. Nothing in this language or any other provision of the act gives the centers authority to make final and unreviewable determinations of the reasonableness or allocability of costs contributed by third parties with which the centers partner.

Although the grantee did not address the issue in its response, it should be noted that the amendment of the MEP statute made by the America COMPETES Act occurred after the period audited and would therefore ordinarily not be applied retroactively. Because the relevant change to the MEP statute clarifies congressional intent without materially altering the rights and obligations of the grantees, the change can be retroactively applied. It should be noted that had the interpretation posited by the grantee been correct, then under well-established principles of law it would not be eligible for retroactive application, as it would constitute a significant change in law that would materially alter grantees' rights and obligations under the program.

Florida MEP also did not present evidence or documentation to show claims were based on actual costs incurred under the subaward agreements, nor did it present any evidence that the subrecipients had financial management systems that met the requirements of 15 CFR 14.21. The subrecipients (1) did not compare outlays with budget amounts for their subawards, (2) did not report actual costs incurred under the subawards, and (3) did not have written procedures to ensure compliance with federal cost principles. Florida MEP presented no additional evidence that third-party contributor documentation met NIST requirements. Accordingly, we have not modified the draft report's findings and conclusions.

\$512,998 UNSUPPORTED AND UNREASONABLE CONSULTANT COSTS

We questioned \$512,998 in claimed consultant costs by Florida MEP because of inadequate supporting documentation and unreasonable duplication of contract services under the existing management contract with Timewise Management Systems, Inc.

Timewise Management Systems is a for-profit corporation doing business as Manufacturing Extension Partnership Management Services (MEP MSI) that offers management and consulting services, such as financial, communications, business planning, and government relations services to a number of corporations and other entities nationwide. Timewise has provided services to Florida MEP since 2001 and also works with four other MEP centers: Arizona MEP, New Hampshire MEP, Maine MEP, and Massachusetts MEP.

OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment A, Section A(2)(g) and A(3), states that for costs to be allowable under an award, they must “be adequately documented.” and that the “cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person ...” The questioned costs of \$512,998 includes \$[REDACTED] in four contracts to Timewise in addition to its negotiated management contract; \$183,500 in five other consultant contracts; and \$113,748 in two employee share contracts with the Massachusetts MEP.

\$[REDACTED] — Additional Timewise Contracts

We questioned \$[REDACTED] in claimed consultant costs including \$39,498 claimed incorrectly under a marketing account. In 2005, Florida MEP paid Timewise \$[REDACTED] as part of its ongoing management contract. NIST reviewed and approved this management contract, as with all contracts over \$[REDACTED]. However, in February 2005, Florida MEP entered into four additional contracts with Timewise at a combined value of \$[REDACTED]. Timewise’s president/CEO presented the four contracts to Florida MEP’s board of directors at a meeting on February 24, 2005, the same day the four contract agreements were signed. The four contracts were valued at less than \$[REDACTED] each, and consequently did not require written prior approval from NIST (see table 2).

Table 2. Annual Contract Amounts with Timewise

Annual Contract Amount	Amount Claimed	Contract Description
\$ [REDACTED]	\$ [REDACTED]	[REDACTED]
\$ [REDACTED]	\$ [REDACTED]	Total Contract Amount

The four contracts required Timewise to submit invoices along with monthly status reports. The status reports were to include a summary of work performed and results obtained. Florida MEP provided OIG auditors with the contract agreements as support, because the invoices did not contain the required information. We do not consider the contract agreements to be adequate documentation.

In addition, tasks in the additional Timewise contracts appear to duplicate tasks already included in the Timewise management contract. A Timewise official stated that the additional contracts were for more specific purposes than the approved management contract. The contracts were to bring the same Supply Chain initiatives being implemented in the New England area to Florida.

We compared the additional contracts’ duties with the original management contract and came to a different conclusion. (See table 3.)

Table 3. Timewise Contracts

Title and Monthly Expense for Additional Timewise Contracts \$ [redacted] per month	Tasks under Additional Timewise Contracts	Tasks under Timewise Management Contract \$ [redacted] per month
[redacted]	[redacted]	[redacted]

All four contracts, approved by the Board of Directors, contained a clause stating Florida MEP cannot use federal funds for contract fees. However, our audit found MEP funds were used to pay Timewise. Timewise officials stated this clause was later waived by verbal agreement of Florida MEP and Timewise because it was determined that these costs were allowable. However, we could find no evidence that the board of directors had been informed of the change in the terms of the contract with Timewise. We concluded the four additional contracts should not have been claimed under the NIST MEP award.

\$183,500 – Unsupported and Unreasonable Consultant Services

We questioned \$183,500 for five consultants because of lack of adequate supporting documentation and unreasonable duplication of services for work that should have been performed by Timewise in accordance with the terms of its management contract.

This questioned amount includes \$ [redacted] for [redacted] \$ [redacted] for [redacted] \$ [redacted] for [redacted] \$ [redacted] for [redacted] \$ [redacted] for Timewise Management. (See table 4.) In addition, we are questioning \$ [redacted] for [redacted] as discussed on page 10.

Table 4. Unreasonable Duplication of Consulting Services

Consultant \$ [redacted] per month	Consultant Contract Services	Timewise Contract Management Services
[redacted] \$ [redacted] per month for [redacted] months	[redacted]	[redacted]
[redacted] \$ [redacted] per month for [redacted] months		
[redacted] \$ [redacted] per month for [redacted] months		
[redacted] \$ [redacted] per month for [redacted] months		
[redacted] \$ [redacted] per month for [redacted] months		

The invoices submitted by the consultants listed above did not include details of the services provided or the specific dates of the services performed as required by the contract agreements. The invoices only included the monthly requests for the contract payments. We did not accept the monthly invoices without any supporting detail as adequate support for the consultant costs.

Timewise officials stated the consultants are available on an as-needed basis at the request of Florida MEP and can independently identify the activities that are consistent with the scope of work of their contracts. Timewise officials also said the monthly requests for payments are the same as the work performance dates. We do not agree that consultants should be paid to make their services available if there is no immediate need. In addition, it appears that the services that are covered by the contracts should be provided by Timewise in accordance with the original management contract. If Timewise does not have the staff or expertise to provide the services Florida MEP needs, then Timewise should be responsible for subcontracting consultants.

We questioned a \$ [redacted] contract over [redacted] months with [redacted] and a \$ [redacted] ongoing contract over [redacted] months with [redacted] because of duplication of services and inadequate supporting invoices that did not include specific services performed. [redacted] is owned by the former director of the NIST MEP program.

We questioned [redacted] months of consultant costs (\$ [redacted]) paid to a consultant who is both the [redacted] of the U.S. - Mexico Chamber of Commerce and the owner of [redacted]. We questioned \$7,500 of the \$ [redacted] claimed because of inadequate supporting documentation. Florida MEP reimbursed Timewise for payments made on its behalf from

August 2005 through January 2006. According to the Timewise agreement effective May 2005, it had a \$ [REDACTED] per month consulting agreement with the [REDACTED] of the U.S. - Mexico Chamber of Commerce. Timewise billed each of its four MEP centers one-fourth of the total amount so that each center, including Florida MEP, was billed \$ [REDACTED] each for a total of [REDACTED] months. The supporting invoices for the Timewise contract did not contain adequate documentation. The questioned amount represents [REDACTED] months of reimbursement costs billed to Florida MEP.

We questioned the remaining \$ [REDACTED] over [REDACTED] months because of inadequate supporting invoices that did not include specific services performed and duplication of services. This consultant contract with [REDACTED] started in January 2006 where the previous contract with the U.S. - Mexico Chamber of Commerce ended. Supporting invoices for the [REDACTED] contract did include a description of some of the work performed during the month. However, the invoices did not include specific details of the services performed, the days the services were performed or time needed, or results of services.

We questioned \$ [REDACTED] over [REDACTED] months for an ongoing contract with [REDACTED] because of inadequate supporting invoices that did not include specific services performed and duplication of services. The company is owned by a [REDACTED] from Maine. After our request for supporting documentation, Florida MEP provided a two-page document from the company that listed service performances over a 2-year period from March 2005 thru July 2007. This one-time document served as the only support offered for monthly invoices paid by Florida MEP at \$ [REDACTED] per month. The document listed services performed but did not provide the details of the specific month or day that the services were performed or any results obtained. In addition, the contract covers the same services Timewise agreed to perform in its contract as managing agent.

We questioned \$ [REDACTED] in one-time consultant costs paid to Timewise as reimbursement for [REDACTED] because of inadequate documentation. [REDACTED] billed Timewise \$ [REDACTED] for services under the Supply Chain program. Timewise did not provide a contract to support these costs or show why these costs should be divided and charged equally to Florida MEP and Massachusetts MEP. The invoice was supported by a memo stating that a board member ([REDACTED] is affiliated with a Florida MEP board member) had conducted various meetings and provided telecommunications support. We do not consider the memo sufficient support to accept an invoice charged to Timewise and divide the costs between two of its MEP centers.

\$113,748 – Unsupported and Unreasonable Massachusetts MEP Shared-Employee Contracts

We questioned \$113,748 in consultant costs for two employee-sharing contracts because of inadequate supporting documentation and unreasonable duplication of services (see table 5). The two contracts were between Florida MEP and Massachusetts MEP (also managed by Timewise). Both employee sharing contracts were signed by the Timewise president/CEO representing Florida MEP.

Of the \$113,748, we questioned \$ [REDACTED] for an ongoing contract with Massachusetts MEP. The purpose of the contract was to share an employee's time between two MEP centers to support the Florida Supply Chain initiative. The contract allowed Massachusetts MEP to charge half an

employee's salary, including benefits, to Florida MEP (not to exceed \$ [REDACTED] per month). Invoices and time sheets submitted by Massachusetts MEP were not supported with specific details of the services performed or the results of those services.

We questioned \$ [REDACTED] in consultant and related travel costs under a January 2007 contract for a second Massachusetts MEP employee as duplication of services and unreasonable travel costs. The questioned contract costs covered 20 workdays from February 5, 2007, through March 2, 2007, at \$ [REDACTED] per day plus related travel costs. The contract was for Florida MEP to retain an experienced and knowledgeable third-party resource to assist in delivering services under the Department of Labor Advanced Manufacturing H-1B Grant Sustainment Plan. This employee was later hired by Florida MEP on March 1, 2007. However Massachusetts MEP reimbursements included travel costs claimed for March 1 - 2, 2007, including return airfare from Florida to Maine on March 2, 2007.

Table 5. Massachusetts MEP Employee Sharing

Massachusetts MEP	Employee Contract Services	Timewise Contract Management Services
Employee 1 \$ [REDACTED] [REDACTED] months	[REDACTED]	[REDACTED]
Employee 2 \$ [REDACTED] [REDACTED] workdays	[REDACTED]	[REDACTED]

GRANTEE RESPONSE

The grantee did not agree with the questioned \$512,998 in additional contract costs, stating that the additional contracts were clearly outside of the services performed under the Timewise management contract. The grantee stated that table 3 of the audit report is (1) misleading as to how the actual contracts are written; (2) does not provide an accurate representation of the actual tasks assigned to the contracts; and (3) incorrectly concludes, without actual documented support, that the tasks were duplicative.

The grantee stated that contrary to the audit report, the additional contractors (1) did provide periodic written summaries of activities performed; (2) were in regular communication with Florida MEP officials (via telephone conferences, e-mail and face-to-face meetings), which was reflected by the supporting invoices; and (3) were determined by Florida MEP to be used on a limited basis. The grantee also contended that the contract rates were reviewed and determined to be reasonable and consistent with all of the services provided.

The grantee stated that both Massachusetts employees recorded time worked and a summary and detailed description of the scope of work and nature of services was in the Massachusetts MEP center database. The grantee also stated that travel costs for employee 2 were incurred on Florida MEP's behalf and were reasonable, allowable, and necessary for the accomplishment of program objectives.

The grantee did not address the contract payment clause contained in the four additional Supply Chain contracts that required the contract payments to be paid outside of Florida MEP's federal funding resources.

OIG COMMENTS

We do not agree with the grantee's response that the additional contracts were outside of the services performed under the Timewise management contract. Tables 3, 4 and 5 in the audit report compare the scope of work in the additional contracts against the Timewise management contract. The scope of work information was obtained directly from contract agreements, and this information supports the audit conclusion of unreasonable duplicative contract services.

The contract agreements required monthly summaries to be submitted with the contract invoices for payments. Monthly invoices reviewed did not contain the summaries and status reports. The invoices also did not reflect any form of communications (verbal or otherwise) between the contractor and Florida MEP officials.

The grantee stated that the consultants for these additional contracts were used on a limited basis. However, we continue to question the reasonableness of the claimed services as well as the lack of adequate documentation to support the services performed.

The grantee did present Massachusetts MEP employee time sheets. However, the time sheets did not provide a monthly detailed written summary of the results of services claimed to have been provided. The audit report questioned travel costs for employee 2 because the entire contract was also questioned for unreasonable duplication of Timewise management contract services.

The Timewise management contract with Florida MEP has a clause that allows Timewise to enter into specialized professional and consulting agreements. However, the management contract clause limits Timewise to an amount not to exceed \$ [REDACTED] per month. As presented in the audit report, \$ [REDACTED] per month was claimed for additional contract services in table 3; \$ [REDACTED] per month in table 4; and \$ [REDACTED] per month (\$ [REDACTED] over [REDACTED] months) in table 5 for employee 1. This totals \$ [REDACTED] per month claimed for the additional contract services—or more than \$ [REDACTED] per month than what the contract clause allows.

Finally, the grantee failed to address the clause contained in the four additional Supply Chain contracts that required payments to be paid outside of Florida MEP's federal funding resources.

We continue to question the entire \$512,998 for additional contract costs as unsupported and unreasonable.

\$164,836 UNREASONABLE AND UNALLOWABLE OTHER DIRECT COSTS

We questioned \$164,836 in other direct costs because of the unreasonableness of the claimed expenses. Of the \$164,836, we questioned \$ [REDACTED] for the purchase of excess training materials; \$ [REDACTED] for the unreasonable purchase of T-shirts for center employees; \$ [REDACTED] in unallowable bad debt costs; and \$ [REDACTED] in unreasonable rental space costs. OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment A, Section A (3) states, "a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person ..."

\$ [REDACTED] – Excess Training Materials Costs

We questioned \$ [REDACTED] in training materials as unreasonable. Florida MEP's training materials inventory has increased from \$ [REDACTED] at April 30, 2006, to \$ [REDACTED] at April 30, 2007. OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment A, Section 28 states "... Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained ..." The majority of training materials were purchased directly from Timewise, Florida MEP's managing company.

Florida MEP officials told us they maintain an inventory because it takes 2 weeks for Timewise to deliver training materials. Officials also stated training materials purchased from other vendors are usually delivered in less than 2 days, and ordering the training materials in bulk from Timewise does not reduce the price. We did not accept this explanation as adequate support for maintaining this unreasonable excess inventory.

\$ [REDACTED] – Unreasonable T-Shirt Purchases

We questioned \$ [REDACTED] in T-shirt and related clothing purchases for Florida MEP employees as unreasonable. Florida MEP officials stated T-shirts are provided to employees to use as a uniform for identification when visiting clients and partners and attending events. However, this amount is excessive for the 21-month audit period reviewed. For example, we reviewed Florida MEP's claimed personnel costs for September 2005, March 2006, and January 2007. The review revealed an average of 24 employees per month. When we compared this to the amount of purchases for this same time period, the average was almost \$ [REDACTED] per employee spent on T-shirts. We believe this is an unreasonable and excessive amount for T-shirt expenses.

\$ [REDACTED] – Unallowable Bad Debts

We questioned \$ [REDACTED] for bad debt expenses as unallowable costs. These bad debt costs represent three uncollected accounts receivable that Florida MEP claimed against the NIST award. OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment B, Section 3, states that bad debts are unallowable. Florida MEP's claimed bad debts included \$ [REDACTED] from [REDACTED] \$ [REDACTED] from [REDACTED], and \$ [REDACTED] from [REDACTED]

Florida MEP agreed that these costs were unallowable during our audit fieldwork. Although June 30, 2007, is outside our audit scope, we noted that Florida MEP claimed another \$ [REDACTED] in bad debt expenses. Florida MEP needs to adjust its claim for that quarter.

\$ [REDACTED] – Unreasonable Rental Space Costs

We questioned \$ [REDACTED] in unreasonable rental space costs claimed as dues and subscriptions. The money was paid to Timewise as a reimbursement for a rental agreement between Timewise and the [REDACTED] located in Washington, D.C.

Under the rental agreement, Timewise pays the [REDACTED] \$ [REDACTED] per month for use of office space in Washington, D.C. The monthly rental costs are then charged by Timewise to its five MEP Centers: Florida MEP, Arizona MEP, Maine MEP, Massachusetts MEP, and New Hampshire MEP. Each MEP Center was charged \$ [REDACTED] per month. We are not convinced of the need for Florida MEP to pay to maintain office space in Washington, D.C.

GRANTEE RESPONSE

The grantee did not agree with the costs questioned for training materials inventories, T-shirt purchases, and rental space. The grantee stated that Florida MEP policy allows project managers to request in advance training materials needed for a 4- to 6-week period. The grantee also stated that location and process changes have allowed the reduction of on-hand inventory and Florida MEP had returned 45 incomplete training items. The grantee also submitted an April 2008 training materials inventory list valued at \$ [REDACTED].

The grantee stated that T-shirt purchases were for branded shirts, similar to uniforms, which were provided to Florida MEP center employees so that clients and event attendees could identify them. The grantee stated that the \$ [REDACTED] per employee represented the initial start-up costs in 2005 and that the costs have now been reduced to \$ [REDACTED] per employee.

The grantee stated that the claimed rental space was related to work between Florida MEP and the [REDACTED]. The grantee also stated that the rental space provided cost-effective office and meeting space for Florida MEP representatives while in Washington, D.C., to work on proposals, meet with federal officials, and conduct other Florida MEP business. The grantee did agree that the \$ [REDACTED] in bad debts was unallowable.

OIG COMMENTS

We do not agree with grantee's response regarding questioned training materials costs. The grantee failed to show the need for a 4- to 6-week inventory buildup of training materials, especially when most of the training materials are purchased from Timewise, as discussed in the audit report. The grantee submitted a training materials inventory of \$ [REDACTED] in 2008, subsequent to our audit period, which is less than the \$ [REDACTED] questioned for 2007 in the audit report. However, we consider either amount to be excessive and unreasonable and continue to question these costs.

We do not agree with grantee's response regarding the questioned T-shirt purchases. The grantee stated that the \$ [REDACTED] per employee T-shirt was for initial start-up costs. The grantee also stated that the T-shirt cost is currently \$ [REDACTED] per employee. We consider both amounts excessive and unreasonable. We continue to question the costs claimed.

Finally, we do not agree that there is a demonstrated need for Florida MEP to maintain rental space in Washington, D.C. We continue to question these costs as unreasonable.

\$99,738 UNALLOWABLE THIRD-PARTY CONTRIBUTOR COSTS

We questioned \$99,738 in claimed third-party in-kind contributions because of inadequate documentation from Florida MEP. The questioned contributions are from four sources: \$ [REDACTED] from the [REDACTED], \$ [REDACTED] from the [REDACTED], \$ [REDACTED] from Florida MEP's board of director meetings, and \$ [REDACTED] from [REDACTED].

NIST General Terms and Conditions, Section 14, states MEP centers must have documented evidence of the third party in-kind contributions from the contributors. This evidence must include the following documentation from the contributors:

- A list of the type of third-party in-kind contribution
- Value of each third-party in-kind contribution
- If personnel time is being contributed: a list of the personnel; the projects and tasks worked; the dates and number of hours worked; the hourly salary rate with the allowable fringe benefits paid; and certified time and attendance records
- Any necessary scopes of work and contracts including cost or price information
- Percentage of time that the contribution was used to support the MEP project

Third-party in-kind contributions must be evidenced by written documentation signed by the contributor and MEP center describing the contribution, its value, when and for what purpose it was donated. The MEP center must provide an acknowledgement of the contribution.

[REDACTED] and [REDACTED] did not maintain required proper records or generate financial reports detailing the value of services directly benefiting and specifically identifiable to the Florida MEP project. The \$ [REDACTED] claimed from [REDACTED] and [REDACTED] were not for contributions of cash, real property, equipment, supplies, goods, or services, but rather expenses incurred by the organizations for their own day-to-day business operations. None of the documentation maintained by Florida MEP for [REDACTED] and [REDACTED] met requirements, and we questioned the entire amount claimed.

We also questioned \$ [REDACTED] claimed for Florida MEP's board of director contributions because Florida MEP did not follow the required valuation procedures. Florida MEP used a flat rate of \$ [REDACTED] to value the board member's time without any of the required supporting documentation showing rates paid for similar work. Furthermore, the value of the board members donated services should be allocated across all of Florida MEP cost centers rather than just MEP activities. Florida MEP had two other non-MEP awards during the audited period that were

treated as separate costs centers along with a cost center for indirect costs and nonfederal expenditures.

In addition, we questioned the \$ [REDACTED] claimed as in-kind cost-share from the [REDACTED] because there was no documentation to support it.

GRANTEE RESPONSE

The grantee stated that it maintained the required documentation for each of its third-party contributors and the documentation was available to the auditors.

OIG COMMENTS

We disagree that the grantee maintained the required documentation. As noted in the draft report, according to the regulations, third-party in-kind contributions must be evidenced by written documentation signed by the contributor and Florida MEP describing the contribution, its value, the date the contribution was made, and the purpose of the donation. Florida MEP must provide an acknowledgement of the contribution. None of the documentation maintained by the grantee describes the contribution, its value, or when and for what purpose it was donated because there was no actual in-kind donation of personnel time, property, or supplies.

\$57,760 UNALLOWABLE LOBBYING COSTS

OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment B, Section 25 (a) (3) through (5) prohibit attempting to influence federal or state legislation through lobbying and a variety of other activities. Based on this guidance, we questioned \$57,760 in claimed costs as unallowable lobbying expenses. The questioned costs involve membership dues for two lobbying organizations and related travel costs.

\$ [REDACTED] American Small Manufacturers Coalition

Florida MEP paid a total of \$ [REDACTED] (\$ [REDACTED] per year for 2 years) in membership dues to the American Small Manufacturers Coalition (ASMC). It claimed \$ [REDACTED] of the \$ [REDACTED] as direct costs to the NIST project. The remaining balance of \$ [REDACTED] was charged as nonfederal as part of the \$ [REDACTED] described on page 23 of this report. According to ASMC's web site, it advocates for legislative and programmatic resources that allow small manufacturing clients to better compete in the global marketplace. ASMC and its members do this by increasing awareness of the importance of American small manufacturers, the challenges which they face, and the federal legislation and programs which affect them. Among other activities undertaken by ASMC are yearly "Hill Day" events in Washington, D.C., where its staff, members and clients advocate for support for the MEP program from Congress during the federal appropriations process. Based on information it reported to the Secretary of the United States Senate, it appears that ASMC incurred \$ [REDACTED] in expenses relating to lobbying activities for the period from July 1, 2005, through June 30, 2007.

Section B.30 of OMB A-122 provides that the costs of an organization's membership in a business, technical or professional organization are allowable. Section B.25(a) of that circular states that, notwithstanding any other provision of the circular, costs associated with certain types of lobbying activities (including attempts to influence the introduction of federal or state legislation, the enactment or modification of pending federal or state legislation through communication with any member or employee of the Congress or State legislature, or any government official or employee in connection with a decision to sign or veto enrolled legislation) are unallowable.

Although Section B.30 would ordinarily allow us to accept the costs of dues paid to a business, professional or technical organization like ASMC, ASMC clearly engages in the type of lobbying activities that are prohibited by Section B.25(a) and the circular expressly states that costs associated with such activities are unallowable notwithstanding any other provision of the circular. Because we cannot tell from the ASMC invoices which portion of the dues paid supports prohibited lobbying activities and which portion funds activities that might be allowable under the circular, we are questioning the \$ [REDACTED] in membership dues paid to ASMC as unallowable lobbying costs.

\$ [REDACTED] – Manufacturers Association of Florida

Florida MEP claimed a total of \$ [REDACTED] (\$ [REDACTED] per year for 2 years) in membership dues Florida MEP paid to the Manufacturers Association of Florida (MAF). The Florida MEP Board of Directors approved this membership when MAF was formed in 2006. When the membership was approved by the board, one of the board members (who was also the president of MAF) said that MAF's board members were lobbying for Florida manufacturing interests and meeting with the Governor's office on a weekly basis. MAF also sponsors an annual "Manufacturers Days at the Capitol" event in Tallahassee, Florida. This event allows MAF members and manufacturers to meet with state legislators. Florida MEP's check for membership dues was made payable to the executive director of MAF, who is a registered lobbyist with the state of Florida.

As was the case with ASMC, although Section B.30 would ordinarily allow us to accept the costs of dues paid to a business, professional or technical organization like MAF that clearly engages in the type of lobbying activities that are prohibited by Section B.25(a) of OMB Circular A-122 and the circular expressly states that costs associated with such activities are unallowable notwithstanding any other provision of the circular. Because we cannot tell which portion of the dues paid to MAF support prohibited lobbying activities and which portion funds activities that might be allowable under the circular, we are questioning the entire \$ [REDACTED] in membership dues paid to MAF as unallowable lobbying costs.

\$ [REDACTED] – ASMC Public Relations Campaign

We questioned \$ [REDACTED] Florida MEP claimed to ASMC as a public relations campaign expense in February 2007. ASMC had received funds from Florida MEP and three other Timewise managed MEP centers (Arizona, Massachusetts, and New Hampshire) to lobby against a proposal to change the national MEP system. However, the proposal was cancelled, and ASMC returned the funds in May 2007 (after the period of this audit).

\$ [REDACTED] – Lobbying Travel Costs

Florida MEP claimed \$ [REDACTED] in travel costs for expenses incurred by the former center director and former and current board members who attended lobbying events sponsored by ASMC in Washington, D.C., and by MAF in Tallahassee, Florida. The lobbying events were “Hill Days” sponsored by ASMC in Washington, D.C., and “Manufacturers Days at the Capitol” sponsored by MAF at Florida State Capital in Tallahassee, Florida. We are questioning membership dues paid to both these organizations by Florida MEP because of their lobbying activities. We are now questioning the travel costs by Florida MEP officials to attend these lobbying events, which seem to be the type of lobbying activity prohibited by Section B(25)(a) of OMB Circular A-122. If dues to organizations are unallowable because they are engaging in prohibited lobbying, then travel expenses to events sponsored by those entities that appear to be prohibited lobbying are unallowable as well.

GRANTEE RESPONSE

The grantee did not agree with the questioned lobbying costs. The grantee stated that the OIG inaccurately assumed that all costs associated with ASMC and MAF were lobbying costs and contended that the questioned costs failed to meet the lobbying definition, or were simply excluded from unallowable costs, under OMB Circular A-122. The grantee stated that the membership dues were not used to (1) influence the outcomes of any elections, (2) assist any political party in campaigning or other political activity, (3) influence introduction or modification of any pending legislation, or (4) otherwise constitute unallowable lobbying.

The grantee stated that both ASMC and MAF have taken measures to ensure that funds allocated for lobbying are separated from membership dues. The grantee stated that ASMC Hill Days and MAF Capital Days events merely provide information to members of Congress about the needs of small manufacturers as well as the successes of the MEP program. The grantee stated that ASMC uses allocated lobbying funds for Hill Days activities but not Florida MEP membership dues.

The grantee agreed that \$ [REDACTED] of the \$ [REDACTED] in questioned lobbying travel costs associated with ASMC Hill Days and MAF Capital Days should be disallowed. However, the grantee stated that questioned travel costs of \$ [REDACTED] were not allocable to or claimed under the Florida MEP agreement. The grantee stated that the \$ [REDACTED] was returned to Florida MEP after the ASMC Public Relations Campaign was cancelled, and MEP officials did not understand the reason for including it in the audit report.

OIG COMMENTS

We do not agree with the grantee’s response to questioned lobbying costs. The grantee did not provide adequate documentation to support the claim that Florida MEP membership dues paid to ASMC were not used for lobbying activities. The grantee did not submit a letter from ASMC related to Florida MEP membership dues or provide any documentation to support the claim that Florida MEP membership dues paid to MAF were not used for lobbying activities. At a minimum, the grantee should provide financial records from both ASMC and MAF that

demonstrate the membership dues from Florida MEP were accounted for separately from other revenues collected and that the use of the membership dues was restricted to nonlobbying activities.

As mentioned to the grantee at the audit fieldwork exit conference, the \$ [REDACTED] ASMC Public Campaign costs were questioned because the funds appeared to be a lobbying expense and the funds were not returned to Florida MEP until May 2007. This was after the audit cutoff date of March 2007. We explained to the grantee that the \$ [REDACTED] was claimed and posted in the general ledger before the audit cutoff date of March 30, 2007.

The grantee stated that \$ [REDACTED] in lobbying travel costs were not allocable to or claimed under the NIST agreement. However, our review of the Florida MEP's travel records showed that these costs were incurred for the ASMC Hill Days by a Florida MEP board member in March 2007. On March 19, 2007, \$ [REDACTED] with a \$ [REDACTED] adjustment was posted to the grantee's financial travel records and claimed against the NIST agreement. We continue to question these lobbying travel costs.

\$ [REDACTED] UNREASONABLE TRAVEL COSTS

Florida MEP claimed travel expenses for both a former Massachusetts MEP employee hired by Florida MEP and a Florida MEP board member who did not have a written consultant agreement with the company. We questioned the total of [REDACTED] in claimed travel costs as unreasonable.

OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment A, Section A(3) states, "a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person ..." Attachment B, Section 39 states, "Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable...when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government."

\$ [REDACTED] – Former Massachusetts MEP Employee

Florida MEP reimbursed \$ [REDACTED] for travel costs to a former Massachusetts MEP employee who was under a consultant contract and later hired by Florida MEP. Florida MEP hired the employee on March 1, 2007, but continued to reimburse the employee for travel costs, including weekly airfares back and forth from Maine to Florida, until April 5, 2007. We also questioned the consulting contract with this former Massachusetts MEP employee 2 (see page 10).

\$ [REDACTED] – Board Member's Consulting Contract

Florida MEP reimbursed \$ [REDACTED] in travel costs to [REDACTED] which is owned by a Florida MEP board member. There was no formal written consultant contract in place. The supporting travel voucher listed the contract number as verbal approval from Timewise's president/CEO. We also questioned additional travel costs to this board member as lobbying costs (see page 18).

GRANTEE RESPONSE

The grantee stated that the \$ [REDACTED] in questioned travel costs were necessary and reasonable, as they related to an employee who was relocating his family from Maine to Florida. The grantee stated the employee needed to sell his home in Maine and look for similar housing in Florida. The grantee agreed with the \$ [REDACTED] questioned travel costs for the Florida MEP board member.

OIG COMMENTS

We do not accept the grantee's response as adequate support for the \$ [REDACTED] in questioned travel costs. The questioned travel costs included airfares from Portland, Maine, to Ft. Lauderdale, Florida. The employee was employed at the Massachusetts MEP not the Maine MEP. Florida MEP is located near Orlando not Ft. Lauderdale, and the grantee failed to explain why the employee was looking for housing in Ft. Lauderdale. We continue to question the \$ [REDACTED] in travel costs from the board member as unreasonable.

\$386,133 QUESTIONED INDIRECT COSTS

Based on the results of our audit, we questioned \$742,782 in direct costs that was the basis for charging indirect costs on the financial status reports submitted to NIST. Consequently, we also questioned \$386,133 in indirect costs associated with the questioned direct costs. This amount of indirect costs questioned is based on the percentage used in the claims to NIST for reimbursement of indirect costs (see table 6).

Table 6. Questioned Indirect Costs

	For the Period July 1, 2005, Through December 31, 2006	For the Quarter Ending March 31, 2007	Total During the Audited Period
Questioned direct costs	\$ 470,710	\$ 272,072	\$ 742,782
Indirect cost rates used on the financial status report submitted to NIST	x [REDACTED] % ¹	x [REDACTED] % ²	
Questioned indirect costs based on questioned direct costs	\$ [REDACTED]	\$ [REDACTED]	\$ 386,133

GRANTEE RESPONSE

The grantee did not respond to this section of the audit report.

¹ For the periods ending 9/30/2006 and 12/31/2006, the Financial Status Reports showed the indirect cost rate as [REDACTED]%, however, the rate actually charged was lower. For the purpose of this report we used the stated billing rate since our audit did not encompass the entire fiscal year and the adjustments to actual had not yet been made. However, during the audit resolution process, we will use the actual indirect costs charged during the year along with any carry forward adjustment.

² For the period ending 3/31/2007, the Financial Status Report showed an indirect cost rate of [REDACTED]%, however, the rate actually charged was higher. For the purpose of this report we used the stated billing rate since our audit did not encompass the entire fiscal year and the adjustments to actual had not yet been made. However, during the audit resolution process, we will use the actual indirect costs charged during the year along with any carry forward adjustment.

OIG COMMENTS

Since we have not changed the questioned direct costs in the final report we continue to question \$386,133 of indirect costs.

INCORRECT AND MISLEADING CALCULATIONS USED TO REPORT EXCESS PROGRAM INCOME

Although Florida MEP had no excess program income, it incorrectly reported excess program income on its financial status report to NIST and inaccurately reported the same funds as “unrestricted net assets” in its financial statements. An unrestricted asset is an asset that is not restricted by donor imposed stipulations either permanently or temporarily, such as the restrictions normally imposed by NIST on excess program income. Florida MEP’s independent public accountant told us the unrestricted net assets were used to pay costs identified by Florida MEP as unallowable for reimbursement by the federal government.

Program income, as defined in 15 CFR, Section 14.2(aa), represents revenue generated by a financial assistance recipient as a result of performing work under its award. A common source of program income in MEP centers includes fees paid by manufacturers for services provided by MEP staff or contractors. NIST’s general practice is to allow MEP centers to use program income to fund the nonfederal share of project costs.

Florida MEP primarily earned its program income from services to clients. According to its quarterly profit and loss statements, Florida MEP earned \$ [REDACTED] in program income during the seven quarters we audited. According to its financial status reports, Florida MEP used \$ [REDACTED] of the program income earned to meet its matching share for the award. Florida MEP did not provide us an explanation as to why it did not use the remaining \$35,085 to meet its matching share.

We calculated excess program income based on Florida MEP’s requirement for cash outlays and after accounting for questioned project costs. We determined that all of the program income earned by Florida MEP could have been used to meet the matching share requirement of the award with no excess to carry over (see table 7).

Table 7. Analysis of Program Income

PROGRAM INCOME ANALYSIS	
For the period July 1, 2005 through March 31, 2007	
Costs incurred according to Florida MEP	\$19,133,115
Costs questioned	12,623,477
Costs accepted	6,509,638
Nonfederal cost-share ratio in approved budget	X 66.67%
Nonfederal share of accepted costs/ cash requirement for program income	\$ 4,339,976
Program income earned	\$ [REDACTED]
Excess program income	-0-

We found it difficult to understand how Florida MEP came to report excess program income of \$ [REDACTED] on its financial status reports to NIST, so we carefully analyzed the partnership's calculations (see table 8).

Table 8. Analysis of Excess Program Income Florida MEP Reported to NIST

Florida MEP Award August 1, 2003, Through March 31, 2007	Total Excess Program Income Calculated by Florida MEP	NIST Share of Excess Program Income (one-third of total excess)	Florida MEP's Share of Excess Program Income (two-thirds of total excess)
Year ending 6/30/2004	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Year ending 6/30/2005	[REDACTED]	[REDACTED]	[REDACTED]
Audit Period			
Qtr ending 9/30/2005	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 12/31/2005	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 3/31/2006	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 6/30/2006	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 9/30/2006	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 12/31/2006	[REDACTED]	[REDACTED]	[REDACTED]
Qtr ending 3/31/21007	[REDACTED]	[REDACTED]	[REDACTED]
Total during audit period	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
For the award period beginning August 1, 2003, through March 31, 2007	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Florida MEP's "Schedule of Undisbursed Program Income"³ indicated the \$ [REDACTED] was only one-third of the amount of total excess program income that Florida MEP had calculated and reported to NIST. Florida MEP considered the other \$ [REDACTED] (2/3 of the excess program income computed) as its own income —usable without federal restrictions or oversight.

We found Florida MEP's accounting was incorrect and misleading in that there was no excess program income or unrestricted net assets. For the seven quarters of our award period, Florida MEP calculated excess program income to be \$ [REDACTED]. One-third of the excess program income is \$ [REDACTED]. This amount was included in the cumulative amount of \$ [REDACTED] reported on the financial status report for the period ending March 31, 2007. The difference of \$ [REDACTED] was deemed excess program income belonging to Florida MEP and treated as an unrestricted net asset as described below.

According to Florida MEP's independent public accountant, the source of cash Florida MEP used to pay expenses included in the "nonfederal" cost center was the funds it called excess program income. Over the seven quarters we audited, Florida MEP incurred \$ [REDACTED] in nonfederal costs and used the funds characterized as excess program income to cover costs that otherwise would not be allowable under any federal award. The remainder of the funds

³ Undisbursed program income and excess program income here are synonymous.

characterized as excess program income was reported in the financial statements as unrestricted net assets. As of April 30, 2007, the last audited financial statements available, Florida MEP reported total unrestricted assets of \$ [REDACTED]

Florida MEP spent funds on nonfederal activities and also maintained a growing balance in an asset account it believed had no federal restrictions. For the seven quarters we audited, Florida MEP had more money coming into the organization than it needed to pay actual expenditures (see table 9).

Table 9. Comparison of Funds Received and Expended for the Audit Period

Category	Amount
Program income earned	\$ [REDACTED]
Total MEP (federal funds) disbursed	5,038,055
Total MEP income	\$ [REDACTED]
Total MEP expenditures	[REDACTED]
Total MEP income not needed to pay cash expenditures	\$ [REDACTED]

Florida MEP drew down federal funds to pay for costs it reported to NIST but these costs were not expenditures requiring cash, such as subrecipient and in-kind costs. By drawing down more federal funds than needed for cash expenditures, Florida MEP was able to grow a reserve account that was used to inappropriately pay \$ [REDACTED] in nonfederal costs during the seven quarters we audited, with the remainder classified as an unrestricted net asset.

Florida MEP should file corrected financial status reports to show that all program income earned was used to meet its cost-share requirement under the award and that it has no excess program income. Financial statements from April 30, 2006 forward must be evaluated to determine how they should be reissued so that the balance of funds that is currently characterized as unrestricted net assets is changed to restricted net assets with a corresponding liability to NIST.

If subrecipient and in-kind costs are not fully disallowed, Florida MEP should reimburse the Manufacturing Extension Partnership program the \$ [REDACTED] spent on nonfederal activities during the period of our audit.

GRANTEE RESPONSE

The grantee did not agree with the draft audit report's position on excess program income, stating that the OIG report rejects the concept that Florida MEP could generate any unrestricted excess program funds. Florida MEP also disagreed that any of the \$ [REDACTED] spent on activities in furtherance of the MEP mission must be refunded to NIST.

The grantee makes several arguments regarding program income and its rationale for why it may keep unrestricted funds. First, the grantee cited a 2001 e-mail from NIST program staff instructing that the centers could use unrestricted funds for capacity building, as a reserve for "maintenance of effort," and for other expenditures. In addition, the grantee's interpretation of

MEP's 2001 Compliance Supplement is that program income is only used to finance cost-share after all other cost-share is applied. Therefore, if the nonfederal portion of the award is met entirely by cost-share there is no obligation to use program income to finance its nonfederal share of the project.

Finally, the grantee supported its statement that it can retain unrestricted program income with the following: (1) the 2006 MEP General Terms and Conditions states excess program income may be carried over to the subsequent funding period, if the center obtains the grants officer's prior written approval, and (2) the 2007-2008 Florida MEP operating plan, which was subsequently approved by NIST, discloses that \$ [REDACTED] has been retained as undisbursed program income. According to Florida MEP, the amount will be kept in the fund balance to offset risk associated with funding delays in the future.

OIG COMMENTS

The grantee mistakenly suggests that the draft report rejects the concept that Florida MEP can earn program income and retain unrestricted excess program funds. We agree that Florida MEP can earn program income and retain a portion of excess program income as unrestricted funds, however, we disagree with the amounts reported to NIST in these categories.

Based on our audit of Florida MEP's accounting records, we reported that Florida MEP used almost all of its program income to meet its federal match and had almost no excess program income for the seven quarters we audited. However, in reviewing the cumulative financial status reports submitted to NIST and a spreadsheet provided by its independent public accountant, we found that Florida MEP reported excess program income of \$ [REDACTED] for the award period beginning August 1, 2003, through March 31, 2007 (as shown in table 8). This inaccurate calculation led Florida MEP to report to NIST that it had undisbursed program income of \$ [REDACTED] (one-third of the total excess program income) that it wanted to keep in reserve. This inaccurate calculation was also the justification for reporting on its financial statements unrestricted net assets that Florida MEP believes are its own funds – usable without federal restrictions or oversight.

Our audit concluded that the calculations reported to NIST on the financial status reports were inaccurate and could not be relied on. Florida MEP had retained funds, including federal funds, and used these funds to pay for unallowable expenses. During the period of our audit the unallowable costs identified in Florida MEP's accounting records totaled \$294,000.

We disagree with Florida MEP's comments and continue to recommend that MEP should file corrected financial status reports to show that all program income earned was used to meet its cost-share requirements under the award and that it has no excess program income. Financial statements from April 30, 2006, forward must be evaluated to determine how they should be reissued so that the funds currently characterized as unrestricted net assets are changed to restricted net assets.

RECOMMENDATIONS

We recommend that the chief of the NIST Grants and Agreements Management Division

- disallow \$12,623,477 in questioned costs,
- recover \$2,868,393 of excess federal funds, and
- require Florida MEP to file corrected financial status reports to show that all program income earned was used to meet its cost-share requirement under the award and that it has no excess program income. The financial statements from April 30, 2006 forward must be evaluated to determine how they should be reissued so that the balance of funds currently characterized as unrestricted net assets is changed to restricted net assets with a corresponding liability to NIST.

SUMMARY RESULTS OF FINANCIAL AUDIT

The results of our interim cost audit for the period July 1, 2005, through March 31, 2007, which are detailed in Appendix C, are summarized as follows:

Federal Funds Disbursed		\$5,038,055
Costs Claimed	\$19,133,115	
Less: Questioned Costs	<u>12,623,477</u>	
Costs Accepted	6,509,638	
Federal Cost Sharing Ratio	x <u>33.33%</u>	
Federal Funds Earned		<u>2,169,662</u>
Refund Due the Government		<u>\$2,868,393</u>

for Kathleen M. McKenna 3/31/2009
Dr. Brett M. Baker Date
Assistant Inspector General
for Audit

Appendix A

OBJECTIVES, SCOPE, AND METHODOLOGY

The primary objective of our audit was to determine whether Florida MEP's reported costs to NIST, included claimed subrecipient costs, were reasonable, allocable, and allowable in accordance with applicable federal cost principles, cooperative agreement terms and conditions, and NIST policy, including MEP operating plan guidelines. To achieve our objectives, we interviewed Florida MEP and NIST Grants Office officials, reviewed NIST award documents, and examined financial records of Florida MEP. We also interviewed officials and examined financial records of eight Florida subrecipients and examined financial records of two organizations claimed by Florida MEP as third-party in-kind contributors.

The audit scope included a review of costs claimed by Florida MEP during the award period of July 1, 2005, through March 31, 2007. Our audit objectives included determining the grantee's progress compared with operating plan performance goals. We reviewed the NIST March 2006 annual assessment of the grantee's progress that stated Florida MEP was performing satisfactorily. We did not independently evaluate Florida MEP's performance under the award. Additional questioned costs could result from subsequent performance audits. We determined the validity and reliability of computer-processed data by direct tests of the data to supporting documentation.

Our audit included an assessment of the MEP's internal controls applicable to the award to evaluate the effectiveness of the control and accountability systems. We reviewed Florida MEP's most recent single audit reports for the years ended April 30, 2006, and April 30, 2007, respectively. An independent certified public accounting firm conducted the audits in accordance with Office of Management and Budget Circular A-133. The reports did not disclose material internal control weaknesses. We did not rely upon the accounting firm's internal control reviews but instead determined that we could better meet our audit objectives through testing of transactions.

We reviewed compliance with laws and regulations as they applied to costs incurred, using as criteria Office of Management and Budget Circular A-21 *Cost Principles for Educational Institutions*, Circular A-122, *Cost Principles for Non-Profit Organizations*, Circular A-133 *Audits of States, Local Governments, and Non-Profit Organizations*, and 15 CFR, Part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations*. We also assessed compliance with the Department of Commerce Financial Assistance Standard Terms and Conditions, MEP General Terms and Conditions, and the cooperative agreement Special Award Conditions. Instances of noncompliance with the above stated laws and regulations are noted in this audit report.

Appendix A

We performed audit fieldwork at Florida MEP's headquarters in Celebration, Florida, and at subrecipient locations from May through October 2007. We conducted this 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. The audit was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated August 31, 2006, as amended.

Appendix B

**FLORIDA MEP
NIST COOPERATIVE AGREEMENT NO. 70NANB3H2002
SUMMARY OF SOURCE AND APPLICATION OF FUNDS
JULY 1, 2005 THROUGH MARCH 31, 2007**

	<u>Approved Budget ⁽¹⁾</u>	<u>Claimed Receipts & Expenses</u>
<u>SOURCE OF FUNDS:</u>		
Federal	\$ 6,847,690	\$ 4,694,867
Nonfederal	<u>13,695,379</u>	<u>14,438,248</u>
Total	<u>\$20,543,069</u>	<u>\$19,133,115</u>
<u>APPLICATION OF FUNDS:</u>		
Personnel	\$ [REDACTED]	\$ [REDACTED]
Fringe Benefits	[REDACTED]	[REDACTED]
Contractual	[REDACTED]	[REDACTED]
Other	[REDACTED]	[REDACTED]
Supplies	[REDACTED]	[REDACTED]
Travel	[REDACTED]	[REDACTED]
Equipment	[REDACTED]	[REDACTED]
Partner Match	[REDACTED]	[REDACTED]
In-Kind	[REDACTED]	[REDACTED]
Indirect Costs	[REDACTED]	[REDACTED]
Total	<u>\$20,543,069</u>	<u>\$19,133,115</u>

¹ The approved budget amounts are for the 2 years ended June 30, 2007. The receipts and expenditures are the actual amounts for the period of our audit, July 1, 2005 - March 31, 2007.

Appendix C

**FLORIDA MEP
NIST COOPERATIVE AGREEMENT NO. 70NANB3H2002
SUMMARY OF FINANCIAL/COMPLIANCE AUDIT
JULY 1, 2005 THROUGH MARCH 31, 2007**

<u>Description</u>	<u>Approved Budget Accepted</u>	<u>Costs Claimed</u>	<u>Results of Audit</u>		
			<u>Costs Questioned</u>	<u>Costs Unsupported</u>	<u>Costs Accepted</u>
Personnel	\$ [REDACTED]	\$ [REDACTED]	\$ 0	\$ 0	\$ [REDACTED]
Fringe Benefits	[REDACTED]	[REDACTED]	0	0	[REDACTED]
Contractual	[REDACTED]	[REDACTED]	473,500 (a)	473,500	[REDACTED]
Other	[REDACTED]	[REDACTED]	255,934(b)	0	[REDACTED]
Supplies	[REDACTED]	[REDACTED]	0	0	[REDACTED]
Travel	[REDACTED]	[REDACTED]	13,348(c)	0	[REDACTED]
Equipment	[REDACTED]	[REDACTED]	0	0	[REDACTED]
Cash Match	[REDACTED]	[REDACTED]	11,394,824(d)	0	[REDACTED]
In-Kind	[REDACTED]	[REDACTED]	99,738(d)	0	[REDACTED]
Indirect Cost	[REDACTED]	[REDACTED]	386,133(e)	0	[REDACTED]
Total	<u>\$20,543,069</u>	<u>\$19,133,115</u>	<u>\$ 12,623,477</u>	<u>\$473,500</u>	<u>\$ 6,509,638</u>
Federal Funds Disbursed			\$5,038,055		
Costs Incurred		\$19,133,115			
Less Questioned Costs		<u>12,623,477</u>			
Costs Accepted		6,509,638			
Federal Cost Sharing Ratio		<u>33.33%</u>			
Federal Funds Earned			<u>2,169,662</u>		
Refund Due the Government			<u>\$2,868,393</u>		

Notes:

(a) We are questioning \$512,998 in contractual costs (see page 6). However, \$39,498 was claimed incorrectly under the other cost category. (See note (b) on page 31.)

Appendix C

(b) We are questioning \$255,934 in claimed other direct costs as described below:

<u>Unallowable and Unreasonable Costs</u>		
Unreasonable Training Materials (see page 13)	\$ [REDACTED]	
Unreasonable T-Shirt Purchases (see page 13)		
Unallowable Bad Debts (see page 13)		
Unreasonable Rental Space (see page 14)		\$ [REDACTED]
<u>Lobbying Costs</u>		
ASMC Costs (see page 16)	\$ [REDACTED]	
MAF Costs (see page 17)		
Public Relations Campaign with ASMC (see page 17)		\$ [REDACTED]
Incorrect Posting of Contractual Costs (see note (a) page 30.)		\$ 39,498
Total Questioned Other Direct Costs		<u>\$255,934</u>

(c) We are questioning \$13,348 in travel costs as described below:

Unreasonable travel (see page 19)	\$ [REDACTED]	
Lobbying travel (see page 18)		
Total Questioned Travel Costs		<u>\$ 13,348</u>

(d) We are questioning \$11,394,824 and \$99,738 under subrecipients claimed costs (see page 2 and page 15).

(e) We are questioning \$386,133 in indirect costs (see page 20).

bcc: Judith J. Gordon, assistant inspector general for audit and evaluation
Brett M. Baker, assistant inspector general for audit
Allison Lerner, counsel to the Inspector General
David A. Sheppard, Seattle regional inspector general
John Bunting, Denver regional inspector general
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September 26, 2008

Kathleen M. McKeivitt
Regional Inspector General for Audits
United States Department of Commerce
Office of Inspector General
Atlanta Regional Office of Audits
401 West Peachtree Street, Suite 2742
Atlanta, Georgia 30308

Dear Ms. McKeivitt:

As counsel to Florida MEP, please find enclosed the comments on the Draft Audit Report concerning Award No. 70NANB3H2002.

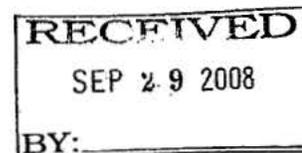
As you will note, we disagree with the findings and recommendations of the Draft Audit Report and have provided the relevant documentation. We are available to meet with you to discuss the issues raised and our response. Should you have any questions, please contact me directly at 202 661 [REDACTED]

Very truly yours,

K&L GATES LLP

By s/ William A. Shook
William A. Shook

cc: Judith J. Gordon
Assistant Inspector General
for Audit and Evaluation
United States Department of Commerce
Office of Inspector General
1401 Constitution Avenue, NW, Room 7886B
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September 26, 2008
Page 2

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Florida MEP Response to Draft Audit Report No. ATL-18568-8-0001.**I. INTRODUCTION**

This Draft Audit Response responds to the proposed findings and recommendations identified in Draft Audit Report No. ATL-18568-8-001 of Florida MEP's (also sometimes referred to as the "Center") Cooperative Agreement Award No. 70NANB3H2002 for the period July 1, 2005 through March 31, 2007 ("Agreement").¹ This response addresses and takes exception to the issues raised in the Draft Audit Report. Attached to this Draft Audit Response are the documents that support Florida MEP's disagreement with the draft findings and recommendations—documents that were available to the auditors during the 39 days of on-site review for Florida MEP's \$5,038,055 Agreement. We note that the Draft Audit Report does not address or mention the many accomplishments of Florida MEP in providing high quality services to the small and medium size manufacturers it serves.

II. SUMMARY

The most glaring omission in the Draft Audit Report is the failure to acknowledge or apply the statutory authorization for the Manufacturing Extension Partnership ("MEP") program that is applicable to Florida MEP's Agreement. In particular, 15 U.S.C. 278k(c) states in relevant part:

(3)(A) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on August 23, 1988, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph (2).

(B) In order to receive assistance under this section, an applicant for financial assistance under subparagraph (A) shall provide adequate assurances that non-federal assets obtained from the applicant and the applicant's partnering organizations will be used as a funding source to meet not less than 50 percent of the costs incurred for the first three years and an increasing share for each of the last three years. For purposes of the preceding sentence, the costs incurred means the costs incurred in connection with the activities undertaken to improve the management, productivity, and technological performance of small- and medium-sized manufacturing companies.

(C) In meeting the 50 percent requirement, it is anticipated that a Center will enter into agreements with other entities such as private industry, universities, and State governments to accomplish programmatic objectives and access new and existing resources that will further the impact of the Federal investment made on behalf of small- and medium-sized manufacturing companies. All non-Federal costs, contributed by such entities and determined by a Center as programmatically reasonable and allocable under MEP program procedures are includable as a portion of the Center's contribution.

¹ We note that, given the magnitude of the findings and the fact that we are unable to determine the source of calculations in the Draft Audit Report, we requested an extension of time to submit these comments. That request was denied.

The failure of the Draft Audit Report to apply this statutory authorization has a direct impact on the Draft Audit Report's largest questioned costs with regard to the contribution of Florida MEP's partners. We request that the final audit apply the MEP statute as enacted by Congress.

In addition to the failure of the Draft Audit Report to apply the statutory authorization for the Florida MEP program, the Draft Audit Report incorrectly concludes that the Florida MEP partners did not have the required financial documentation to support the assistance provided in support of Florida MEP's program. In fact, as detailed below, each of the partners maintained and made available documents that allows a reasonable finding that costs expended were: (1) reasonable; (2) allocable to Florida MEP's mission of assisting small and medium sized manufacturers in Florida; (3) and allowable pursuant to statutory and regulatory authority, federal cost principles, National Institute on Standards and Technology ("NIST") guidelines, and the terms and conditions of Florida MEP's Agreement.

With regard to the findings on Excess Program Income, the Draft Audit Report fails to apply the NIST MEP position on excess program income that has been communicated to Florida MEP and the other MEP Centers since 2001-a position that is consistent with regulatory authority, federal cost principles, and similar treatment in other federal programs.

With regard to each of the other findings and recommendations, the Draft Audit Report incorrectly states that Florida MEP did not maintain adequate documentation with regard to each of the areas question and, where the Draft Audit Report cites to available documents, the documents are simply misinterpreted by the Draft Audit Report. A comprehensive review of the available documentation supports a reasonable conclusion that Florida MEP expended all of its federally-awarded money as well as that of its partners in a manner that met all statutory and regulatory requirements, applicable NIST guidelines, and the terms and conditions of the Agreement.

III. OVERVIEW OF THE MEP PROGRAM

Many of the Draft Audit Report's comments appear to be based on a fundamental misinterpretation of how the MEP program operates pursuant to the program's statutory authorization. By way of example, the Draft Audit Report simply ignores the fact that the authorizing MEP program statute assigns to Florida MEP the responsibility of establishing that all non-federal costs are "programmatically reasonable and allocable under MEP program procedures...." 15 U.S.C. § 278k(c)(3)(C).

The overarching goal of the MEP program, as embodied in the authorizing statute, is to increase the global competitiveness of United States manufacturing by enhancing productivity and technological performance.² Congress established that MEP Centers would accomplish this goal by: (1) the transfer of manufacturing technology and techniques from NIST to Centers to manufacturing companies; (2) participation of individuals from industry, universities, State governments, other Federal agencies and NIST in cooperative technology transfer activities; (3) efforts to make new manufacturing technology and processes accessible and usable by small and medium-sized U.S. companies; (4) active dissemination of scientific, engineering, technical, and

² 15 U.S.C. § 278k(a).

management information to industrial firms; and (5) utilization of expertise and capability that exists in Federal laboratories other than NIST.³

Specific activities conducted by the Centers may include: (1) establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer; (2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and (3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.⁴

MEP Centers are instructed by statute to achieve these objectives by forming partnerships with organizations such as private industry, universities, and State governments. The goal of these partnerships is three-fold: to accomplish programmatic objectives, to further the impact of the Federal investment, and to assist recipients in meeting their cost-share requirements.⁵ The partnering organizations take the knowledge shared by the MEP Center and, through their own activities, assist and provide services to the same small and medium sized manufacturing firms served by Florida MEP thereby furthering the impact of the Federal investment without the expenditure of additional dollars.

Partnerships, consistent with statutory mandates, add direct value to Florida MEP by reducing the duplication of activities and by leveraging the partner's activities to increase MEP mission effectiveness, penetration, and output. Partners use their own reputation and marketing and referral activities to expand the MEP efforts, resulting in increased numbers of small and medium sized manufacturers receiving needed assistance and efficiencies in project execution. Partners also increase the Florida MEP Center's value and prevalence within the community by integrating MEP services into its own services to enhance achievement and performance.

Activities performed by partners are mutually beneficial to the partner, its members, the MEP Center's clients, and the MEP Center. The goal of NIST MEP, as embodied in its programmatic objectives, is not to bring other resources back into the Center (the typical federal paradigm of cost-share), but instead the goal is to push the technology, programs, and expertise as far out into the community as possible. The direct benefit the Center receives from its partnerships is the ability of another entity to provide the services and perform the education and outreach functions that would otherwise fall to the Center, allowing the Center to focus on offering additional services, education, and outreach to SMEs.

As noted above, Congress enacted a legislative amendment to the MEP authorizing statute to clarify how the MEP Centers' cost contributions are to be determined. Legislative clarification became necessary after prior audits of MEP Centers in the 2003 timeframe resulted in proposed findings and recommendations that were ultimately found to frustrate the mission, structure, and purpose of the MEP program as conceived by Congress.

³ 15 U.S.C. § 278k(b).

⁴ 15 U.S.C. § 278k(c).

⁵ America Competes Act, Pub.L. No. 110-69, 121 Stat. 587 (2007).

The provisions in the legislative clarification that replace the prior language of 15 U.S.C. § 278k(c)(3) clarify the nature and classification of non-Federal costs contributed by partnering organizations. The legislation further states that:

In meeting the 50 percent requirement, it is anticipated that a Center will enter into agreements with other entities such as private industry, universities, and State governments to accomplish programmatic objectives and access new and existing resources that will further the impact on the Federal investment. . . . All non-federal costs, contributed by such entities and determined by a Center as programmatic reasonable and allocable are includable as a portion of the Center's contribution.

This clarification of the MEP authorizing statute clearly and unambiguously states that all non-federal costs contributed by partnering entities are to be counted as a portion of the Center's required cost contribution. Second, it defines "costs incurred" as "costs incurred in connection with the activities undertaken to improve the management, productivity, and technological performance of small and medium sized manufacturing companies." *America Competes Act*, Pub. L. 110-69, § 3003(a)(3)(C). Third, the statute clearly places the authority for determining which costs are programmatic allocable and reasonable on the Center. Fourth, the amendment encourages Centers to utilize the partners' existing resources in accomplishing the MEP mission. Without these partnerships, the Centers would not meet their cost share requirements. The statute does not require that each partnership involve the receipt of federal dollars by the Florida MEP partners, nor does the statute require the use of a particular type of contract or relationship with the partner. The statute contemplates the use of "agreements" the type of which are not contemplated to be relevant to the Center's determination of allowable and reasonable costs.

The legislative history is clear that contributions by industry, universities, and state governments, which frequently act as partners, (i.e. the partners of Florida MEP) "may be included as a portion of the Center's 50 percent or greater funding obligation if it is determined *by the Center* to be programmatic reasonable and allocable." H. Rept. 110-289 at 16 (emphasis added).

IV. QUESTIONED PARTNER COST SHARE

The Draft Audit Report questions \$11,394,824 in claimed project costs for Florida's eight partners.⁶ The Draft Audit Report recommends that these costs be disallowed because the auditors stated that the partners were required to meet the Financial Management Standards applicable to recipients, set forth in 15 C.F.R. § 14.21, and that none of the eight partners met these requirements. It is on this ground alone that the Draft Audit Report questions all costs claimed by Florida MEP for the expenditures of its eight partners that further the statutory mission of the MEP program consistent with the statutory authorization.

⁶ The eight partners examined are: University of Central Florida, Economic Development Commission of Florida's Space Coast, First Coast Manufacturing Association, South Florida Manufacturing Association, Manufacturing Association of Central Florida, Bay Area Manufacturers Association, Florida Sterling Council, and the University of North Florida.

As noted above, the Draft Audit Report fails to acknowledge that the authority and responsibility to determine whether a particular cost is “programmatically reasonable and allocable” and therefore “includable as a portion of the Center’s contribution” has been granted by Congress to Florida MEP. As evidenced by the documents reviewed by the auditors, Florida MEP reasonably made this determination for each of its partners based on the information reviewed by Florida MEP officials.

As noted in the Overview section, the authorizing statute requires MEP Centers to form a network of partnering organizations to assist them in reaching small and medium sized manufacturers, thereby furthering the impact of the Federal investment. The statutory emphasis of the program is on forming strategic partnerships to use existing resources and avoid duplication of services.⁷ Partnering organizations of a MEP Center can be entities in private industry, universities, and State governments.⁸ The Centers’ partnerships are integrated with existing state economic development, community college, and trade or industry association programs. This statutory partnering model is unique in the Federal government to the MEP program; it couples the partners’ work with that of the MEP Centers so that the provider of services to manufacturers is indistinguishable between the partner and the Center. The Centers’ partners have the same overall mission objectives and share common values, approaches, and targeted market segments.

The work of the partners is integrated with the MEP Centers to increase the efficiency and success of the MEP program. MEP partners work with the Center in reaching additional manufacturers, providing additional services, and transferring technology to SMEs to fulfill the core mission of the MEP Centers stated in 15 U.S.C. § 278k. In this way the Center uses the existing resources of each partner to further the impact of the Federal investment by reaching manufacturers it would not, on its own, have the ability to reach and to provide additional services the Center could not otherwise offer.⁹ Using a network of partners, the MEP Center can concentrate its resources on serving clients and on technology transfer. Without such a network, Federal resources would be diverted from providing direct services to SME’s to expenditures for marketing and outreach to small and medium sized manufacturers. In this manner the activities of the partners are essential to the efficiency and effectiveness of the MEP Center and its ability to accomplish the programmatic objectives set forth in the statute and regulation. See 15 U.S.C. § 278k and 15 C.F.R. § 290.3.

The MEP Center and the partner share the same mission – to provide services to SMEs throughout the State of Florida that allow SMEs to maintain or to improve their competitiveness in an increasingly global market. Such services include education, outreach, technology, and other support. The activities that the partners perform on behalf of the MEP Center are allowable – they are operating expenditures that would be expended by the Center itself if the

⁷ *America Competes Act*, P.L. 110-69, Sec. 3003(a)(3)(C).

⁸ *Id.*

⁹ The program regulation, 15 C.F.R. Part 290, directs Centers to leverage their resources by concentrating on approaches that are broadly applicable to a range of organizations and regions. 15 C.F.R. § 290.3(e). The regulation defines leverage as “the principle of developing less resource-intensive methods of delivering technologies (as when a Center staff person has the same impact on ten firms as was formerly obtained with the resources used for one, or when a project once done by the Center can be carried out for dozens of companies by the private sector or a state or local organization).” *Id.*

partnership did not exist. The services provided by the partners in partnership with the MEP Center, and the costs incurred in providing those services represent a direct financial benefit to the MEP Center—consistent with statutory authorization. The costs incurred by the partners are costs that do not have to be incurred by the MEP Center, allowing the Center to then use the funds it retains on providing services to SMEs.

The costs incurred by the partner and determined by Florida MEP to be programmatically reasonable and allocable need to relate to activities identified in the Scope of Work of the agreement executed between the partner and Florida MEP and be related to Florida MEP's Agreement with NIST. The activities identified in the Scope of Work are used to create a budget that is also incorporated into the agreement. On a regular basis the partner submits its financial support for the relevant activities to Florida MEP, which then reviews the documentation and removes any items of cost that are unallowable under federal cost principles. Florida MEP then creates a report matching the line items in the budget, and compares the expenditures to the budget and the scope of work to verify that costs are reasonable, allocable, and allowable.¹⁰

The Draft Audit Report recommends the disallowance of \$11,394,824 on the grounds that Florida MEP "was unable to disclose accurate, current, and complete financial results for the eight organizations – a requirement for financial management systems that track and report on federal funds." Draft Audit Report at 2. The Draft Audit Report asserts that these partner costs are somehow unallowable because they were not kept in accordance with 15 C.F.R. § 14.21, made applicable to the partners through the flow-down provision of 15 C.F.R. § 14.5 and applicable to Florida MEP through incorporation by reference into the Agreement.

The Draft Audit Report further asserts that the MEP Operating Plan Guidelines dated March 2005 "require all MEP subawards to include the applicable administrative requirements and all general and special award conditions imposed on the recipient." The Draft Audit Report also questions the cost-share claimed by Florida MEP because the eight partners did not establish separate cost centers for those costs incurred under the MEP subawards—although the Draft Audit Report does not cite to authority for this assertion.

The Draft Audit Report references a "special award condition" that states that one-half of the recipient's costs share must be in cash. We have reviewed all award documents issued to Florida MEP during the audited period and did not find any such special award condition included by NIST. Copies of the awards maintained by Florida MEP are provided as attachments which clearly show there is no such condition. NIST cannot now impose a special award condition retroactively.

In fact, as stated below, each Florida MEP partner maintained the documentation necessary to demonstrate that non-federal costs were incurred in furtherance of the statutory objectives of the MEP program thereby allowing Florida MEP to properly and reasonably determine that the costs were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution" and in accordance with the cost principles, therefore allowable.

¹⁰ The Center has the authority to determine which costs are reasonable and allocable under the cost principles. *America Competes Act*, P.L. 110-69. Sec. 3003.

A. Financial Management Systems

The Florida MEP Operating Plan which was reviewed and approved by authorized NIST officials including the NIST Grants Officer, the NIST Program Officer, and legal counsel, clearly outlines the collaborative activities of Florida MEP and each partner, describing the specific costs that each partner will incur in furtherance of the MEP mission.¹¹ Prior approval from the authorized Grants Officer, which occurred in this instance, is additional support for the only reasonable conclusion that the cost share claimed by Florida MEP is consistent with statutory and regulatory requirements. OMB Circular A-122, codified at 2 CFR Part 230, defines "prior approval" as:

[S]ecuring the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by this part and its Appendices. Generally this permission will be in writing. Where an item of cost requiring approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

2 CFR § 230.25. It is the very cost items included in the budget submitted by Florida MEP for each partner, reviewed and specifically approved by the authorized officials at NIST that are now questioned in the Draft Audit Report. The Draft Audit Report does not, however, recognize or address this prior approval notwithstanding the fact that it was brought to the auditors' attention during the on-sight review.

The Draft Audit Report questioned the partner expenditures claimed as cost share for eight of Florida MEP's partners on the grounds that "[t]he eight subrecipients did not have financial management systems that met [15 C.F.R. § 14.21]." Draft Audit Report at 3. Specifically, the Draft Audit Report alleges that the subrecipients did not maintain:

- Accurate, current, and complete disclosure of the financial results of each federally-sponsored project or program (Section 14.21(b)(1));
- Comparison of outlays with budget amounts for each award (Section 14.21(b)(4)); and
- Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with applicable cost principles and the terms and conditions of the award (Section 14.21(b)(6)).

Id.

B. Accurate Disclosure of Actual Costs Incurred

As noted above, authorized NIST officials reviewed and approved each of the agreements executed between Florida MEP and each partner. Each of those agreements includes a detailed

¹¹ Florida MEP Operating Plan

Scope of Work (Schedule A) and a detailed description of Financial and Programmatic Monitoring (Schedule B).¹⁰ Schedule B requires each partner to submit to Florida MEP the following documentation:

- (1) Financial documentation including validation of payroll costs associated with the activities and other in-kind services not otherwise recorded;
- (2) Selected portions of the general ledger as related to the activities described herein;
and
- (3) Invoices, purchase orders, or related documentation verifying incurred costs.

Using the documentation submitted by the partners, Florida MEP followed detailed procedures to ensure that the costs were reasonable, allocable, and allowable. Florida MEP also conducted periodic site visits to ensure that records were being kept pursuant to the agreement. Florida MEP verified the costs claimed by each partner by reviewing their accounting records and comparing the reported expenditures against the original proposed budget. This procedure, to which the parties agreed to in writing, and the results of which were made available to the auditors, reasonably demonstrates that the non-federal dollars expended by the partner were expended to further the MEP statutory mission. It is the parties to an agreement who are in the best position to know what they intended by the agreement. See *National Urban League, Inc.*, United States Department of Health and Human Services Departmental Appeals Board, No. 294 (April 30, 1982) (DAB adopted Grantee's interpretation as reasonable, and gave it more weight than the Agency's interpretation since the Grantee was a party to the agreement.). During site visits, Florida MEP verifies that the claimed costs were actually incurred, that the activities benefited the Florida MEP Center consistent with its Agreement with NIST, and are in furtherance of the MEP mission. *Id.*

C. Comparison of Actual Outlays with Budgeted Amounts

As part of its partnering process, Florida MEP met with each partner to review its annual operating budget, identified the specific cost categories allocable to the activities under the agreement and incorporated in the Florida MEP Operating Plan. The monthly and quarterly financial reports provided by the partner clearly show the actual expenditures against the budget by line item for those costs identified in the Florida MEP's approved Operating Plan.¹¹

D. Written Procedures for Determining Allowability

Florida MEP made its determination of allowability using written procedures that apply applicable federal cost principles. Florida MEP worked closely with each partner, through the steps described above, to ensure that costs claimed by Florida MEP are reasonable, allocable, and allowable, and derived from non-federal sources. The Agreement, in Schedule B, clearly requires, consistent with 15 C.F.R. Part 14, that the partner provide documentation sufficient for Florida MEP to determine the allowability of costs pursuant to its written procedures and the

¹⁰ Exhibits 8, 12, 17, 22, 25, 28 and 32

¹¹ Florida MEP Operating Plan

applicable cost principles. This procedure complies with the authorizing statute, which prevails over the general administrative provisions in the event of a conflict. See *United States v. Coates*, 526 F. Supp. 248 (E.D. Cal. Nov. 19, 1981), *aff'd in part, reversed in part*, 692 F.2d 629 (9th Cir. Nov. 19, 1982).

Florida MEP determined that the expenditures of individual partners on behalf of SMEs were “programmatically reasonable and allocable” and were therefore “includable as a portion of the Center’s contribution.”¹² A summary of the process used for each partner is described below.

1. University of Central Florida

The University of Central Florida, Office of Research and Commercialization (“UCF”) administers and participates in the State of Florida High Tech Corridor Council (“FHTCC”), established by the state legislature in 1996 to attract, retain, and grow high tech industry and the workforce to support it within the 23 county, Interstate 4 (I-4), Florida High Tech Corridor. Florida MEP and UCF work together to promote the interests of high tech manufacturers by facilitating technology transfer and commercialization, providing guidance on process improvement and quality standards, conducting workforce training programs, and offering grant assistance.

Florida MEP’s Technology Transfer Project Manager (“MEP PM”) works directly with UCF and the FHTCC to identify opportunities and needs. The MEP PM matches industry participants with the University and vice versa. The partnership furthers the mission of Florida MEP by assisting manufacturers with their technology and commercialization needs. All costs incurred by UCF and claimed by Florida MEP are directly related to either the costs of administering the FHTCC or the costs directly related to individual research projects between the University and advanced/high tech manufacturing companies that are undertaken to facilitate technology transfer and improve the competitiveness of Florida manufacturers.

Florida MEP’s Operating Plan, as approved by the authorized NIST Grants Officer, Program Officer, and legal counsel states:

The cost share provided by UCF to Florida MEP is a result of the collaborative efforts by both parties to provide manufacturers access to the latest technology and manufacturing theories and ideas, assistance with providing grants to manufacturers for technology transfer and commercialization and promote lean manufacturing theories and services for manufacturers along Florida’s High Tech Corridor. Florida MEP utilizes as cost share UCF’s administrative expenses which include but are not limited to: salaries for staff (including fringe); office expenses (rent, telephone, stationary, printing, office supplies); meeting expenses and travel expenses.

In addition, the Budget Narrative further defines the expenses incurred by UCF in furtherance of the MEP project. Salaries are defined to include the portion of professor and staff salaries for time spent working with client companies on the FHTCC Grant. Supplies and Office expenses

¹² *America Competes Act*, P.L. 110-69, Sec. 3003, 121 Stat. 587 (2007).

and Lab Project Fees include costs of providing services to client companies, including supplies, lab fees and material costs. Marketing costs are associated with marketing the FHTCC Grant Program.¹³

Supporting Documentation

UCF provided Florida MEP with budget position reports and detailed budget and expenditure reports that were specific to each project paid for with FHTCC Grant funds as well as the financial reports for administering the FHTCC Program as is stated in the approved Operating Plan and as outlined in Schedule B of the agreement between the parties.¹⁴ Florida MEP verified that any costs that are used to match other federal awards are excluded from the reports sent to Florida MEP. Florida MEP conducted periodic site visits with UCF to review source documentation and discuss distribution of FHTCC Grant Funds. In addition to reviewing UCF's policies Florida MEP also tested source documents to ensure that the costs contributed were specific to the FHTCC Program and were reasonable, allocable, and allowable under the cost principles.¹⁵ UCF provided Florida MEP with a copy of the State of Florida Auditor General Financial Audit Report. Furthermore, the Associate Vice President for Research certified UCF's contribution of expenditures related to its MEP activities and that all costs contributed were not paid for with federal funds and were not included as contributions to any other federally assisted project or program.¹⁶

Florida MEP monitored UCF by reviewing its financial records, supporting documentation and provided guidance for complying with applicable federal guidelines. UCF followed generally accepted accounting principles ("GAAP") and underwent an annual State of Florida audit conducted by the State Auditor General. Consistent with this process, Florida MEP determined that the expenditures of UCF on behalf of manufacturers were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution."

2. Economic Development Commission of Florida's Space Coast

The Economic Development Commission of Florida's Space Coast ("EDC") is a private, not-for-profit organization committed to the economic stability and growth of Brevard County, Florida. Florida MEP and EDC collaborated on offering services specifically designed to deliver successful and cost effective products and services designed to improve the competitiveness of Florida's manufacturers.

The Florida MEP and the EDC have collaborated on and co-sponsored over 25 workshops and seminars for manufacturers in Brevard County since 2005. These workshops included such topics as principles of lean manufacturing, value stream mapping, supply chain development and doing business with the government. In addition, Florida MEP participated on the EDC's Industry Advisory Committee, the goal of which is to enhance the EDC's support of the National Association of Manufacturers' basic objectives: to advance manufacturing, including reducing

¹³ Florida MEP Operating Plan

¹⁴ UCF Sample Financial Reports Ex. 10

¹⁵ UCF Site Visit Notes Ex. 9

¹⁶ UCF Letter Certifying Expenditures Ex. 11

domestic production costs, to level the international playing field, to promote innovation, and to ensure an adequate supply of skilled workers.

As described in the Florida MEP Operating Plan that was approved by the authorized NIST Grants Officer, Program Officer, and legal counsel, Florida MEP utilizes as cost share the EDC's daily operating expenses directly related to the MEP project, including, but not limited to, salaries (including fringe benefits), travel, marketing research materials, meetings, office supplies, postage and printing, telephone and rent. These expenses are directly related to EDC's ability to provide the programs that enhance business opportunities, education, and economic development for manufacturers in Brevard County.¹⁷

Supporting Documentation

The EDC provides Florida MEP with detailed financial statements including Profit and Loss statements (budget vs. actual), detailed general ledger accounts, and transaction detail by account, along with source documentation supporting the costs claimed.¹⁸ The EDC follows generally accepted accounting procedures and under goes an annual independent audit and provides the Florida MEP with a copy of that independent audit report.

Florida MEP periodically conducted site visits at EDC to discuss how the EDC's expenditures on behalf of manufacturers were used as cost share for the Florida MEP Agreement. Florida MEP verified that the funds are derived from non-federal sources and were not used as cost share for any other federal program.¹⁹ The EDC's President certified their contribution of expenditures related to MEP activities and that all costs contributed were not paid with federal funds and were not included as contributions to any other federally assisted project or program.²⁰

Florida MEP monitors the EDC and reviews its financial records, supporting documentation and provides guidance for complying with applicable federal guidelines. Consistent with this process, Florida MEP determined that the expenditures of the EDC on behalf of manufacturers were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution."²¹

3. First Coast Manufacturers Association

The First Coast Manufacturers Association ("FCMA") is a regional trade association representing manufacturers in the Northeast Florida region. Its members employ more than 50% of the 45,000 manufacturing workers in the region and represent all facets of the manufacturing community from small machine shops to large bottlers. Florida MEP and FCMA collaborate to provide services specifically designed to help improve the competitiveness of manufacturers in Florida.

¹⁷ Florida MEP Operating Plan at 41.

¹⁸

¹⁹ EDC Site Visit Notes Ex. 14

²⁰ EDC Letter Certifying Expenditures Ex. 16

²¹ *America Competes Act*, P.L. 110-69, Sec. 3003, 121 Stat. 587 (2007).

FCMA's Lean Consortium assists manufacturers with implementing lean process improvement methodologies by training a Lean Champion within each organization. A Lean Champion is a designated employee who works to educate and train other employees of a particular manufacturer on lean principles.

As outlined in the Operating Plan, reviewed and approved by authorized NIST officials, FCMA contributed costs to Florida MEP relating to sponsoring and hosting workshops, seminars, and trade shows, among other events, and contributed a share of its daily operating expenses such as its managing agent fee, office expenses (rent, telephone, stationary, printing, postage, office supplies), and meeting and travel expenses, all of which are directly related to the furtherance of the MEP project.

Supporting Documentation

FCMA provides Florida MEP with a quarterly general ledger detailing specific expenditures under each expense account number. In addition, FCMA provides a budget comparison report, an income statement, a balance sheet, and supporting invoices and documentation.²²

Florida MEP monitors FCMA and reviews its financial records, supporting documentation, and provides guidance for complying with applicable federal guidelines. FCMA followed generally accepted accounting principles ("GAAP"). Periodically, Florida MEP conducted site visits at FCMA to review FCMA's policies and procedures and source documentation. Consistent with this process, Florida MEP determined that the expenditures of FCMA on behalf of SMEs were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution".²³

Furthermore, FCMA certified its contribution of expenditures related to its MEP activities and that all costs contributed were not paid with federal funds and were not included as contributions to any other federally assisted project or program.²⁴

4. South Florida Manufacturers Association

South Florida Manufacturers Association ("SFMA") is a not-for-profit trade association serving the manufacturing community in South Florida. There are approximately 4,500 manufacturing companies in Broward, Miami-Dade, and Palm Beach counties employing over 150,000 people. Florida MEP and SFMA worked together to offer services specifically designed to promote the growth and competitiveness of small and medium sized manufacturers in South Florida.

Florida MEP and SFMA co-hosted workshops and seminars that promoted the services available to small and medium sized manufacturers from SFMA and from Florida MEP. Also conducted were plant tours, the South Florida Manufacturing Day as well as the provision of training and consulting to manufacturers on a wide variety of topics.

²² See sample FCMA Financial Reports. Ex 19.

²³ *Id.*

²⁴ FCMA Letter Certifying Expenditures Ex 21

As outlined in the Florida MEP Operating Plan and Budget, reviewed and approved by the authorized NIST Grants Officer, Program Officer, and legal counsel, SFMA contributed expenditures spent on behalf of the MEP project including salaries (inclusive of benefits) for SFMA's president and staff members, office expenses including rent, telephone, office supplies, printing costs, travel expense, marketing expenses including production of brochures, events, calendars and newsletters and event expenses, including speakers, venue costs, food, printing, equipment rental, photo and other expenses, all of which are directly related to the furtherance of the MEP project.²⁵

Supporting Documents

SFMA provided Florida MEP with a copy of its annual operating budget, quarterly statement of cash flow reports, statements of activity reports and year-to-date budget report showing budgeted amounts to actual expenditures, invoices supporting costs claimed, the annual audit report and Income Tax Return Form 990.²⁶ SFMA follows generally accepted accounting procedures and under goes an annual independent audit.

Periodically, Florida MEP conducted site visits with SFMA to review and discuss collaborative activities, SFMA's policies and procedures and source documents supporting its expenditures in furtherance of the MEP project and how Florida MEP used these expenditures to match its federal award.²⁷

5. Manufacturers Association of Central Florida

The Manufacturers Association of Central Florida ("MACF") is a non-profit trade association representing the manufacturing community of Central Florida and is the catalyst through which manufacturing executives coordinate their efforts to establish and maintain a favorable business and economic climate for manufacturing in the Central Florida region.

Florida MEP and MACF collaborated to offer services specifically designed to help manufacturers with exposure to technological advancements, quality control, and process improvement, with the goal of increasing the competitiveness of manufacturers in Central Florida and throughout the state. Florida MEP and MACF worked to jointly promote and host informational sessions and workshops on such topics as lean manufacturing, value stream mapping, kaizen, lean six sigma, and others, conducted manufacturing plant tours, hosted roundtables on topics of importance to manufacturers, and cooperated on other business development events.

As outlined in the Florida MEP Operating Plan and Budget, reviewed and approved by the authorized NIST Grants Officer, Program Officer, and legal counsel, MACF contributed costs incurred on behalf of the MEP project including the salaries (inclusive of benefits) of MACF's director and staff members, rent and general office expenses, that are incurred directly in the

²⁵ Florida MEP Operating Plan at 32.

²⁶ Sample SFMA Financial Reports and supporting documentation Ex. 24

²⁷ FCMA Site Visit Notes dated March 1, 2006 Ex. 23

furtherance of the MEP project, including telephone, office supplies, printing costs, marketing expenses including production of brochures, events, calendars and newsletters, and event expenses, including co-sponsored Lean events, plant tours, manufacturer's roundtables, and business development events for manufacturers.²⁸

Source Documents

MACF provided Florida MEP with a copy of its annual operating budget, monthly income and expense reports and actual to budget financial reports as well as supporting source documentation as requested.²⁹

Periodically, Florida MEP conducted site visits with MACF to review and discuss collaborative activities, MACF's policies and procedures and source documents supporting its expenditures in furtherance of the MEP project. Florida MEP also discussed how it used MACF's expenditures to match the MEP's federal award.³⁰

6. Bay Area Manufacturers Association

Bay Area Manufacturers Association ("BAMA") is a non-profit trade association representing the manufacturing community of Tampa Bay. BAMA's mission is to provide Tampa Bay's manufacturing community with quality educational and training programs, events with high take-away-value, and forums for networking and information exchange.

Florida MEP and BAMA collaborated to offer services specifically designed to help manufacturers with exposure to technological advancements, quality control, and process improvement, with the goal of increasing the competitiveness of manufacturers in Tampa Bay and throughout the state. Florida MEP and BAMA worked to jointly promote and host informational sessions and workshops on such topics as lean manufacturing, value stream mapping, kaizen, lean six sigma, and others, to conduct manufacturing plant tours, to host roundtables on topics of importance to manufacturers, and other business development events for BAMA members and guests.

As outlined in the Florida MEP Operating Plan and Budget, reviewed and approved by the authorized NIST Grants Officer, Program Officer, and legal counsel, BAMA contributed costs incurred on behalf of the MEP project including the salaries (inclusive of benefits) of BAMA's director and support staff, rent and general office expenses that are incurred directly in the furtherance of the MEP project including telephone, office supplies, printing costs, marketing expenses including production of brochures, events, calendars and newsletters, and event expenses, including co-sponsored Lean events, plant tours, manufacturer's roundtables, and business development events for manufacturers.³¹

²⁸ Florida MEP Operating Plan at 29.

²⁹ Sample MACF Financial Reports Ex. 27.

³⁰ MACF Site Visit Notes dated November 28, 2005 Ex 26.

³¹ Florida MEP Operating Plan at 30.

Source Documents

BAMA provides a copy of its annual operating budget, monthly income and expense reports and actual to budget financial reports as well as supporting source documentation as requested.³²

Periodically, Florida MEP conducted site visits with BAMA to review and discuss collaborative activities, BAMA's policies and procedures and source documents supporting its expenditures in furtherance of the MEP project. Florida MEP also discussed how it uses BAMA's expenditures to match the MEP's federal award.³³

7. University of North Florida

The University of North Florida's ("UNF") Division of Continuing Education provides training and professional services to help organizations respond to changing opportunities and increase efficiency and effectiveness of core business processes. The University of North Florida teaches that the key to remaining competitive in today's business environment is continuously improving quality, productivity and customer satisfaction. The University of North Florida's Center for Quality can equip an organization with the tools it needs to improve its competitive edge and improve profitability by offering training in ISO 90012000 Certification, Six Sigma and Lean methodologies.

Florida MEP and UNF collaborative activities included joint client site visits and assessments that promoted core programs and services, co-sponsorship of workshops, seminars and events, the collocation of a MEP Project Manager at UNF's Division of Continuing Education, and joint training programs for manufacturers.³⁴ As outlined in the Operating Plan reviewed and approved by the authorized NIST Grants Officer, Program Officer and legal counsel, UNF contributed costs related to salaries and benefits for staff conducting training for and providing services to manufacturers; administrative expenses including general office expenses and back room support; and training costs and client site visit costs, all of which are incurred directly in the furtherance of the MEP project.

Source Documentation

UNF tracked those companies it serves by NAICS code and calculated the percentage of expenses attributable to manufacturers based upon the client industry code. Quarterly, UNF provided Florida MEP with the percentage of manufacturers (out of total clients) served, a budget worksheet, the year-to-date actual to budget report, and a detailed activity report for each training or conference and supporting source documents.³⁵ UNF also provided Florida MEP with a copy of its procurement policies and its annual State of Florida Auditor General Financial Audit Report.³⁶

³² Sample BAMA Financial Reports Ex. 30

³³ BAMA Site Visit Notes dated June 5, 2006. Ex. 29.

³⁴ Florida MEP 2006 Operating Plan at 48.

³⁵ Sample UNF Financial Reports Ex. 33.

³⁶ UNF Procurement Policy and 2005 & 2006 State of Florida Auditor General Reports. Ex. 34.

Florida MEP monitored UNF by reviewing its financial records, supporting documentation and by providing guidance for complying with applicable federal guidelines. UNF follows generally accepted accounting principles and underwent an annual State of Florida audit conducted by the Auditor General. Consistent with this process, Florida MEP determined that the expenditures of UNF on behalf of manufacturers were “programmatically reasonable and allocable” and were therefore “includable as a portion of the Center’s contribution.”³⁷

V. QUESTIONED PARTNER PROGRAM INCOME

The Draft Audit Report expresses concern over program income earned by Florida MEP partners but not reported to NIST by Florida MEP. Florida MEP did not report program income earned by its partners due to the fact that it was used by the partners to fund MEP activities.

Program income is defined as “gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award,”³⁸ including fees for services performed, use of rental or real property acquired under federally-funded projects, and sale of commodities fabricated under an award. The partners generated program income consisting of workshop and conference fees, subscriptions, special projects, and other non-federal revenue from their MEP-supported activities. Any program income earned by the partners from their Florida MEP supported activities was spent on Florida MEP activities. Each partner tracks this income in its accounting system and reports it to Florida MEP throughout the year in its financial reports, delineating its revenue and expenses by activity.

The processes used to verify costs and track program income for Florida MEP’s partners are set out below. Included is a table identifying the gross income earned by the partner that is directly generated by the Florida MEP supported activity, the expenditures of the income and the net program income for the period.

A. University of Central Florida (“UCF”)

The funds supporting the FHTCC Program are state funds that are administered through UCF are appropriated to UCF for the FHTCC Program from the State of Florida. UCF does not generate program income because none of the activities it conducts in furtherance of the MEP mission are conducted using federal funds. There can be no federal interest in program income if the income is not produced using federal funds. *See* 15 C.F.R. § 14.2(aa).

B. Economic Development Commission of Florida’s Space Coast (“EDC”)

The EDC generates program income from fees for admission to special events such as the EDC Annual Meeting and the Industry Appreciation Banquet. EDC tracks the income earned from these events in its accounting system and reports it to Florida MEP on the financial reports

³⁷ *Id.*

³⁸ 2 C.F.R. § 215.24.

submitted to Florida MEP.³⁹ Any excess program income earned by EDC from its MEP supported activities is likewise spent on MEP activities.

Source of Revenue	Gross Program Income	Less Expenses	Net Program Income
Meetings/Functions, Promotional Sponsorships and Publications	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

C. First Coast Manufacturers Association ("FCMA")

FCMA generates program income from special events and workshops. FCMA tracks the income earned from these events in its accounting system and reports it to Florida MEP on the financial reports.⁴⁰ Any excess program income earned by FCMA from its MEP supported activities is likewise spent on MEP activities.

Source of Revenue	Gross Program Income	Less Expenses	Net Program Income
Meetings/Functions/Promotional Sponsorships; Publications and Special Projects	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

D. South Florida Manufacturers' Association ("SFMA")

SFMA generates program income from fees generated from special events and workshops. SFMA tracks the income earned from these events in its accounting system and reports it to Florida MEP on the financial reports.⁴¹ Any excess program income earned by SFMA from its MEP supported activities is likewise spent on MEP activities.

Source of Revenue	Gross Revenue	Less Expenses	Net Revenue
Meetings/Functions, Consulting, Training Institute, Job Bank, Special Projects	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

³⁹ See sample financial report for EDC at Ex. 13.

⁴⁰ See sample financial report for FCMA at Ex. 19.

⁴¹ See sample financial report for SFMA at 24.

E. Manufacturers' Association of Central Florida ("MACF")

MACF generates program income from fees generated from special events and workshops. MACF tracks the income earned from these events in its accounting system and reports it to Florida MEP on the financial reports.⁴² Any excess program income earned by MACF from its MEP supported activities is likewise spent on MEP activities.

Source of Revenue	Gross Program Income	Less Expenses	Net Program Income
Meetings/Functions, Promotional Sponsorships; Publications and Special Projects	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

F. University of North Florida ("UNF")

UNF generates program income from fees and tuition and reports these amounts and the corresponding expenditures on its quarterly auxiliary budget worksheet which Florida MEP monitors.⁴³ Any excess program income earned by UNF from its MEP supported activities is likewise spent on MEP activities.

Source of Revenue	Gross Revenue	Less Expenses	Net Revenue
Tuition and Fees	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

VI. QUESTIONED CONSULTANT COSTS

A. TimeWise Contracts

The Draft Audit Report questions \$ [REDACTED] in claimed costs because of the alleged apparent duplication of services with the TimeWise management contract when in fact the TimeWise contracts in question were not a duplication of efforts. Table 3 in the Draft Audit Response is misleading as to how the actual contracts are written. Draft Audit Response at 6.

The TimeWise Management Services Agreement, as approved by the Florida MEP Board of Directors and approved by authorized NIST officials, is specific to providing services to Florida MEP under its Cooperative Agreement No. 70NANB3H2002 in the areas of financial management, communications, and business planning and governmental relations.⁴⁴ These tasks, in turn, are more specifically defined to include twelve service areas. The four MEP MSI contracts relating to the Florida Supply Chain Initiative were executed, per the Florida MEP's Board of Directors directive, to assist Florida MEP with new program initiatives and were

⁴² See sample financial report for MACF at 27.

⁴³ See UNF sample auxiliary budget and worksheet at 33.

⁴⁴ Management Services Agreement dated July 1, 2005 and January 1, 2006. Ex. 35

clearly outside of the services to be performed under the TimeWise Management Services Agreement.

During 2004, the Florida MEP Board of Directors Strategic Planning Committee, in fulfilling its authorized duties, identified initiating a supply chain improvement program in Florida, similar to the successful program being implemented in New England, as one of Florida MEP's key strategic thrusts. During the November 9, 2004, Board of Directors Meeting,⁴⁵ the Board of Directors reviewed and approved the Florida MEP Strategic Plan FY 2005-2007.⁴⁶ As a result of this strategic decision and to initiate the process of implementing a program in Florida similar to the New England Supply Chain Initiative, at the annual Board of Director's meeting held on February 24, 2005, the Board of Directors reviewed a video of the New England Center for Supply Chain Integration; were presented with a scope of the activities needed to begin the initiative;⁴⁷ discussed the process in further detail; and then voted to negotiate and execute the necessary agreements with MEP MSI to assist in accomplishing the strategic plan.⁴⁸

The goal of the Florida Defense Manufacturing Supply Chain Initiative was to jump start an effort to increase the level of participation of Florida's non-minority and minority small to medium sized manufacturing enterprises (SMEs) in defense and commercial contracting opportunities, either as qualified prime contractors or subcontractors. This was to be accomplished by leveraging the infrastructure and initial successes of the Department of Defense-supported New England Defense Manufacturing Supply Chain Initiative and related Center for Supply Chain Integration.

The Defense Logistics Agency, an agency within the Department of Defense ("DoD"), had awarded a contract to Concurrent Technologies Corporation ("CTC") which subcontracted with MEP Management Services to implement a six-state integrated manufacturing model in New England to assist DoD in accessing New England's underutilized manufacturing community by increasing both the quantity and quality of SME teaming arrangement opportunities and by providing a larger and more diverse cross-section of SMEs from which to draw from for the purpose of forming effective teaming arrangements. This large and diverse cross-section of SMEs is necessary to satisfy the range of DoD procurement requirements in the critical areas of cost savings, high quality, sufficient quantity and on-time delivery, across the broad range of the DoD demand spectrum for products and services.

Furthermore, the Florida MEP 2005 Operating Plan⁴⁹ which was approved by authorized NIST officials, identified the Center's first strategic effort in pursuing supply chain opportunities: "establish SupplyPoint™ and a Florida center for supply chain integration with state and federal funding and link registered Florida SMEs to the national demand opportunities." *Id.* The second related but separate strategic effort was to serve the minority manufacturing community: "Florida MEP will develop ways to address the needs of both Hispanic-owned manufacturers and members of the Spanish speaking workforce through a partnership with the US-Mexico

⁴⁵ Florida MEP Board of Directors Meeting Minutes, November 9, 2004 Ex. 36

⁴⁶ Florida MEP Strategic Plan FY: 2005-2007 at 3.

⁴⁷ Scope of Work for Supply Chain Initiative presented at Florida MEP Board Meeting. February 24, 2005 Ex. 38

⁴⁸ Florida MEP Board of Directors Meeting Minutes, February 24, 2005 Ex. 38

⁴⁹ See Florida MEP 2005 Operating Plan at 11.

Chamber of Commerce.⁵⁰ Examples of initiatives include pursuing Federal Department of Labor funding to establish a training program for future minority Computer Numerically Controlled operators and federal Department of Defense funding to establish a minority center for supply chain integration.”

Under the Supply Chain Initiative, Florida MEP assisted manufacturers in Florida with identifying and pursuing new business opportunities with DoD, Original Equipment Manufacturers, and first and second tier suppliers already within the defense supply chain. Through the use of SupplyPoint® software and the Florida Center for Supply Chain Integration, Florida MEP was able to assist manufacturers by capturing their capabilities and matching those capabilities with new business opportunities thus allowing Florida’s small and medium sized manufacturing enterprises to increase the level of participation in defense and commercial contracts either as qualified prime contractors or subcontractors.

The Draft Audit Report also asserts that the invoices did not contain the required supporting documentation. The Draft Audit Report does not, however, address or acknowledge the fact that the members of the Florida MEP Board of Directors were kept informed throughout the entire initiative by means of regular telephone conferences, meetings and email updates—directly related to the expenditures being made. Furthermore, during regularly scheduled Board of Directors meetings MEP MSI management officials made presentations updating the Florida MEP Board of Directors on the progress of the Florida Supply Chain Initiative.⁵¹ Each time a member of the Board of Directors requested additional information, it was provided in a timely manner.⁵²

The Draft Audit Report does not provide an accurate representation of the actual tasks assigned to MEP MSI for the Florida Supply Chain Initiative when compared to the tasks assigned to TimeWise for management support services of the Florida MEP. As a result, the Draft Audit Report incorrectly concludes, without actual documented support, that the tasks were duplicative. The following is a comparison of the different tasks and efforts.

1. Florida Supply Chain Initiative Contracts

a. Contract - Pursue State and Federal Funds

MEP MSI will pursue state and federal grants and contracts to further the work initiated by this Project in order to secure defense and commercial contracts for Florida SME suppliers. Specifically MEP MSI will:

- Pursue opportunities through State Incumbent Worker grants
- Department of Labor grant to establish a CNC Operator training program in Florida for minorities
- Educate Florida Congressional Delegation on the initiative

⁵⁰ See Florida MEP 2005 Operating Plan at 7 & 10.

⁵¹ Board of Director Meeting Minutes and Presentations from May 19, 2005 and November 8, 2005 Ex. 39

⁵² Florida National Account Prospectus Memo Ex. 39

- Pursue Federal grant or contract to establish a Center for Supply Chain Integration in Florida⁵³

Outcome

This contract was specific to finding sources of funding to help initiate and replicate the New England Manufacturing Supply Chain program in Florida. Florida MEP has been awarded a subcontract under a contract through the Defense Logistics Agency for \$ [REDACTED] to begin October 2007. Under that contract, Florida MEP assisted Florida manufacturers with identifying new business opportunities within DoD. Florida MEP worked with manufacturers to reduce the amount of time necessary to prepare and submit bids in response to RFP/RFQs which greatly enhanced their ability to secure government contracts. In August 2007, Florida MEP successfully opened began operation of the Center for Supply Chain Integration in Melbourne.

b. Contract – National Demand Sales Efforts

MEP MSI will link Florida SupplyPoint™ registered Florida SMEs to the national sales efforts to identify and pursue manufacturing demand contract opportunities in the defense and commercial sectors. Specifically under this contract MEP MSI will:

- Identify Florida SMEs as available suppliers in national sales efforts to defense prime contractors and 1st tier suppliers
- Identify Florida SMEs as available suppliers to the small business specialists at the DLA Defense Supply Centers
- Identify Florida SMEs as available suppliers to the small disadvantage business specialists at defense prime contractors and DoD Agencies
- Leverage teaming agreements between Florida SMEs and New England SMEs for contract opportunities.⁵⁴

Outcome

MEP MSI worked with several large OEMs to identify suppliers in Florida who would benefit from the services of the Florida MEP and its new Defense Manufacturing Supply Chain Initiative. Florida MEP, as a result of this effort, has delivered services to several large aerospace companies and its suppliers to help improve their process and utilize the services of the Center for Supply Chain Integration.⁵⁵

c. Contract – SupplyPoint®

MEP MSI will create and maintain a Florida MEP SupplyPoint™ web page and wizard protocol specific for the Florida MEP supply chain initiative. Specifically MEP MSI will:

⁵³ See Vendor Agreement for Task 1, Schedule A Ex. 40

⁵⁴ See Vendor Agreement for Task 2, Schedule A Ex. 40

⁵⁵ National Sales Update regarding Florida Supply Chain Initiative Ex. 39

- Create Florida MEP SupplyPoint™ web page
- Publish quarterly Florida SupplyPoint™ e-Newsletter
- Maintain Florida MEP SupplyPoint™ site⁵⁶

Outcome

MEP MSI has customized SupplyPoint® and developed a wizard protocol for the Florida MEP. Florida MEP pays MEP MSI a monthly subscription fee to maintain the website, provide necessary maintenance and updates, backup information on the website and provide disaster recovery, and host the website.

d. Contract – Outreach to Manufacturers

MEP MSI will conduct a statewide outreach effort to contact all Florida SMEs who are involved in machine shop related activities, educate them on the initiative and invite them to register in SupplyPoint™. MEP MSI will use every avenue available to maximize the number of Florida SMEs to be registered in SupplyPoint™. Specifically MEP MSI will:

- Prepare marketing information for Florida Initiative
- Make direct calls to 1,300 Florida SMEs who are in the machine shop sector
- Train and educate Florida MEP Channel Partners on the initiative
- Provide Florida SMEs access to SupplyPoint™ Help Desk to facilitate registration⁵⁷

Outcome

MEP MSI developed marketing material, educated strategic partners on the benefits of SupplyPoint® and Florida's supply chain initiative and coordinated the efforts of the Florida MEP staff to engage their clients on SupplyPoint®. During 2005-06 over 200 SMEs were registered on SupplyPoint®.

2. Comparison and Description MEP Management Services Contract

In contrast to the specific tasks associated with each of the MEP MSI contracts to implement the stages of Florida MEP's supply chain initiative, Florida MEP's Management Services Agreement with TimeWise is specific and limited to providing services to Florida MEP under its Cooperative Agreement with NIST with TimeWise providing day-to-day oversight of the Center at the request of and under the direction of the Board of Directors under a fixed-price arrangement. Of note, the Management Services Agreement was pre-approved by an authorized NIST official prior to the Board of Directors voting to accept it. Also of note is the fact that the

⁵⁶ See Vendor Agreement for Task 3, Schedule A Ex. 40.

⁵⁷ See Vendor Agreement for Task 4, Schedule A Ex. 40.

Management Services Agreement allows Florida MEP to reduce the percentage of its budget expenditures on internal management activities to a level well below other MEP Centers.

Under the Management Services Agreement, the specific and limited tasks assigned to TimeWise are:

- **Sales Support**

Sales support is a coordinated set of activities that manage the effectiveness and success of Florida MEP's field operations. TimeWise supports Florida MEP in outreach, field operations management, joint client sales calls, product distribution strategies, and professional development of field staff and quality control. Florida MEP entered into a License Agreement with TimeWise to purchase its Time Wise® suite of products for Florida MEP to use in the Centers delivery of services. TimeWise has License Agreements with many of the Centers in the MEP Program.

- **Information Technology**

TimeWise makes available to Florida MEP (for a fixed monthly subscription fee) the use of certain proprietary databases for integrated project tracking, time reporting and client management systems including SupplyPoint. The subscription fee covers the cost of customization of website, maintenance of database, backup/disaster recovery and hosting the SupplyPoint website for the Florida MEP.

- **Funding Sources**

TimeWise assists Florida MEP with researching potential grant proposal opportunities; assisting in the preparation of the proposals; and researching and identifying state and federal funding sources that will benefit the clients served by the Center.

- **Partnerships**

TimeWise assists Florida MEP with developing partnerships with organizations within the State of Florida that have a mission to assist SMEs throughout the state and that help Florida MEP meet NIST MEP federally mandated requirements. TimeWise assists the Florida MEP foster these relationships by attending initial meetings, developing the partnership agreements and helping the Center monitor the submission of partnership agreements to NIST/MEP. TimeWise also coordinates with Florida MEP staff the activities between the organizations and with the collection of partnership reports (financial and programmatic).

- **MEP Collaboration**

TimeWise manages multiple MEP Centers and in doing so realizes that each Center has unique staff resources and capabilities. TimeWise facilitates the use of best practices and the sharing of staff resources and expertise with Florida MEP.

- **Financial Management**

TWMS manages preparation of financial statements and proposed budgets; provides oversight and assistance in responding to federal and state audits. Provides oversight and management of financial reporting systems.

- **Management of Human Resources**

TWMS manages personnel policies and procedures; recruitment of new staff; oversee employee benefit plans, employee training and advancement and oversee maintenance of employee files and records.

- **Management of Reporting Requirements**

TWMS provides support of the Florida MEP's strategy for meeting the Minimally Acceptable Impact Measures (MIAM). Oversees preparation of economic impact studies based upon Florida MEP's efforts. Prepares NIST reports.

- **Strategic Planning**

TWMS facilitates strategic planning sessions of the Florida MEP Board of Directors including tracking key strategic goals set by the Board of Directors.

- **Business**

TWMS manages the preparation of required business filings and oversee legal and contract issues.

- **Board of Directors Communications**

TWMS facilitates Board of Director meetings no less often than 4 times a year; consults with Board of Directors on proposal and document reviews and assists the Board of Directors in federal and state compliance issues.

- **Technology Transfer**

TWMS consults on procedures to be used in technology commercialization programs and initiatives and assists the Center in the development of new relationships to enhance new product development.

B. Questioned Other Consultant Costs

The Draft Audit Response questioned \$183,500 in consultant services because of the alleged lack of adequate supporting documentation and unreasonable duplication of services.

Contrary to what is stated in the Draft Audit Report, the consultants did provide periodic written summaries of the activities performed during the term of their contract. In addition, each consultant was in regular communication with MEP Center management officials and employees regarding their activities via telephone conferences, email and face-to-face meetings. The invoices reflect this regular communication. The recipient retains ultimate responsibility to oversee the contractors and subrecipient performance and determine program compliance.⁵⁸ Florida MEP assured that the services procured were received in accordance with the terms of their contracts. Documentation to support the reasonableness of the contractor invoices can be in the narrative provided by the contractor for the invoice period. Additionally, criteria used in approving invoices include the reasonableness, the delivery of services were performed and it was in accordance with the contract terms.⁵⁹

Based upon the strategic thrusts identified in Florida MEP's Strategic Plan for FY 2005-2007⁶⁰ and its 2005 Operating Plan,⁶¹ the Center identified consultants whose expertise and experience would best assist the Center in reaching its strategic goals. Each consultant possessed a certain area of expertise that was of value to the Florida MEP. The Florida MEP Board of Directors has delegated authority to TimeWise to engage specialized professional and consulting services on behalf of Florida MEP when it is reasonable and necessary. All rates and amounts were reviewed and determined to be reasonable and consistent with all of the services provided. It was reasonably determined by Florida MEP to utilize the specialized services of consultants on a limited basis rather than incurring the expense of finding and hiring as full-time employees individuals to perform similar roles.

1. [REDACTED]

[REDACTED] has extensive experience within the Federal government in particular NIST MEP and the DOD. [REDACTED] was engaged to assist the Center with:⁶²

- identifying and securing new business opportunities with OEMs, and 1st and 2nd tier suppliers
- identifying funding opportunities through Federal or state grants

⁵⁸ See OMB circular A-133 § .210, App. I. and the Federal Grants Management Handbook at 96 (September 2004).

⁵⁹ See Criteria for Contracting Officer and Contracting Officer Technical Representative at www.emcbc.doe.gov/files/dept/contracting/frequently%20asked%20-%20invoicing.doc.

⁶⁰ Florida MEP Strategic Plan FY 2005-2007 at 3

⁶¹ Florida MEP 2005 Operating Plan at 7 & 10.

⁶² Professional Services Agreement between Florida MEP and [REDACTED] LLC Ex. 41

- providing assistance with analyzing grant opportunities and guidance on writing proposals
- representing Florida MEP on issues supporting SMEs in the State of Florida
- promoting the services and successes of the Florida MEP

The Draft Audit Report questions \$ [REDACTED] paid to [REDACTED], “because of duplication of services and inadequate supporting invoices that did not include specific services performed.”⁶³ [REDACTED] assisted Florida MEP by participating in meetings with various military installations, federal agencies, and other entities, to discuss the Florida Center for SupplyPoint Integration and the services the Center provides; met with large OEMs to discuss supply chain development and worked with Center staff on goals and objectives to meet the needs of the DOD supply chain; reviewed and commented on Florida MEP grant proposals; kept Florida MEP apprised of new grant solicitations; and participated in discussions regarding workforce training initiatives. In addition, [REDACTED] served as a valuable resource for the Florida MEP in regards to its federal funding partner NIST MEP. Invoices received from [REDACTED] clearly detail the services performed.⁶⁴

2. [REDACTED]

[REDACTED] provides learning solutions for supply chain improvement by providing supply chain strategies and extended process improvements. [REDACTED] worked with Florida MEP staff on training and educating Center staff on SMEs, prime contractors and OEM supply chain improvement and processes for managing their extended enterprise. In addition, [REDACTED] was a resource for all MEP staff in regards to sharing their extensive knowledge on improving the financial performance of manufacturers involved in supply chain improvement efforts. As a result much of the time spent each month by [REDACTED] was answering phone calls and questions from Center staff. The invoices accurately reflect the services provided and are consistent with the written agreement between Florida MEP and [REDACTED]

3. [REDACTED]

The Draft Audit Report questioned \$ [REDACTED] over 15 months because of alleged inadequate supporting invoices as well as alleged duplication of services. However, as evidenced by documents that were available to the auditors, [REDACTED] did provide Florida MEP with quarterly reports that outlined the functions performed for that respective quarter—reports that were consistent with the agreement between Florida MEP and [REDACTED].⁶⁵

[REDACTED] was engaged by Florida MEP to assist the Center in identifying funding opportunities and developing grant proposals that would benefit Hispanic manufacturers and workers in Florida.⁶⁶ Specifically, [REDACTED] assisted Florida MEP with developing a proposal for Hispanic Small Manufacturing Initiative for Sun Belt States; attended meetings with

⁶³ Draft Audit Report at 21.

⁶⁴ See sample invoice and summary of activities from October 2006 for [REDACTED] Ex. 41

⁶⁵ See sample invoice and summary of activities from April 2006 for [REDACTED] Ex. 43

⁶⁶ Professional Services Agreement between Florida MEP and [REDACTED] Ex. 43

Department of Labor officials regarding grant funds available for training Hispanic workers in Florida; participated in meetings with DoD officials to discuss utilizing the Florida Center for SupplyPoint Integration to identify Hispanic and other minority manufacturers to participate in the DoD supply chain; and worked with Florida MEP on a proposal submitted to the Department of Labor for the Mobile Outreach Skills Training (M.O.S.T.) Program for Hispanic workers.

In addition, as identified in the Florida MEP Strategic Plan FY 2005-2007, the Board of Directors identified as one of its key strategic thrusts:⁶⁷ *"Serve the Hispanic Manufacturing Community and to do so through a partnership with the US-Mexico Chamber of Commerce."* Florida MEP utilized the services of [REDACTED] because of their in-depth knowledge and expertise of the issues surrounding Hispanic owned manufacturers and Spanish speaking workers—specialized expertise that was not available from within the Florida MEP organization.

4. [REDACTED]

[REDACTED] provided in depth knowledge and technical expertise in the areas of formulating a plan to identify federal funding opportunities and drafting successful grant proposals. [REDACTED] was engaged to assist Florida MEP with exploring federal education, training and grant opportunities.⁶⁸

Florida MEP management officials were continually updated on the activities performed by [REDACTED] through emails, telephone conferences and periodic meetings. [REDACTED] assisted the Center with the preparation of briefing materials regarding the proposal for the Florida Center for SupplyPoint Integration; and advised the Center on effective communication strategies and talking points for promotion of supply chain initiative expansion proposal.⁶⁹ [REDACTED] provide specialized services, as determined by Florida MEP officials that were not otherwise available within the Florida MEP organization.

VII. Questioned Consultant And Related Travel Costs.

The Draft Audit Report questioned costs related to a Massachusetts MEP employee ("Consultant") who was contracted by Florida MEP⁷⁰ to assist the Center for a period of twenty (20) days. The services that were provided by the Consultant were directly related to Florida MEP's ongoing client projects. The scope of work and type of delivery was for a client project related to [REDACTED] and not the Department of Labor Advanced Manufacturing H1B project as claimed in the Draft Audit Report. The cost for the Consultant was \$ [REDACTED] per day for twenty (20) days, totaling \$ [REDACTED]. The services provided by the Consultant were specialty services not covered under the existing TimeWise or any other consultant contract by Florida MEP. Rather than being a duplication of services, the use of a specialized consultant was a proper and reasonable limited expenditure for a specifically identified need.

⁶⁷ Florida MEP Strategic Plan FY: 2005-2007 at 3 Item #2

⁶⁸ Professional Services Agreement between Florida MEP and [REDACTED] Schedule A Ex. 44

⁶⁹ Overview of Florida MEP work activities - [REDACTED]

⁷⁰ Agreement between Massachusetts MEP and Florida MEP dated January 22, 2007 Ex.45

The travel expenses of \$ [REDACTED] questioned in the Draft Audit Report (part of the \$18,317 questioned costs) were incurred by the Consultant for travel to Florida MEP to assist the Florida MEP with client delivery for the period of 2/5-2/16/07. The travel expenses were paid by Florida MEP directly to Massachusetts MEP.⁷¹ Such costs were incurred on Florida's behalf and were reasonable and necessary for the accomplishment of Florida MEP's programmatic objectives and are therefore allowable. This individual was later hired by Florida MEP on a full-time basis.

The expenses for two days mentioned as questioned costs, totaling \$ [REDACTED] for March 1, 2007 and March 2, 2007, are from an expense report of costs paid by Massachusetts MEP that had been submitted to Massachusetts MEP in error.⁷² The costs for those days should have been charged directly to Florida MEP because the employee's activities for those days were related to his work for Florida MEP, but the expense report was submitted to and paid by Massachusetts MEP. Therefore, it was necessary for Florida MEP to reimburse Massachusetts MEP for the \$ [REDACTED]. The employee was not paid by both Florida MEP and Massachusetts MEP.

VIII. Shared Employee Contracts

The Draft Audit Report questioned costs of \$ [REDACTED] which were allowable incurred costs documented by time sheets submitted by the two individuals employed by Massachusetts MEP who worked directly with the Florida MEP under the Florida Supply Chain Initiative.

As stated above, the Florida MEP Board of Directors decided to implement a Florida Supply Chain Initiative based upon the success of the New England Supply Chain Initiative. To do so in the most cost effective manner possible, Florida MEP executed a contract with Massachusetts MEP for the sharing of staff resources to avoid the added time and cost of hiring and training new staff. Massachusetts MEP staff had extensive knowledge in SupplyPoint® and the engineering services that were going to be made available through the Florida Center for Supply Chain Integration. Prior to contracting with Massachusetts MEP, Florida MEP determined that there were no locally available resources with the necessary knowledge of SupplyPoint® and the engineering services that the Center for Supply Chain Integration would eventually offer in Florida. Florida MEP determined that such costs were reasonable and necessary for the services performed, that they were comparable to the costs charged on the open market and that such costs were allocable to the MEP mission.

The two Massachusetts MEP employees recorded their time on Massachusetts MEP's time entry database ("CIS") which included a summary description of the services provided according to the contract between Massachusetts MEP and Florida MEP, which describes in detail the scope of work and the nature of these services. The time recorded is accurate and is maintained in Massachusetts MEP's CIS database which is approved by the employee's supervisor. The scope of work for the contract between Massachusetts MEP and Florida MEP was directly related to the Florida Supply Chain Initiative and the SupplyPoint database. These services are clearly outside of the scope of work of TimeWise' general management contract with Florida MEP and are directly related to SupplyPoint and the Florida Supply Chain Initiative. The services

⁷¹ Massachusetts MEP Invoice # 3954 Ex. 45

⁷² Ex. 45 (time sheet for period Feb. 26, 2007 through March 2, 2007).

included the writing and review of CNC machine codes for hard-to-procure machined parts and reviewing technical drawings and RFP/RFQ requirements which are special and unique services outside of the TWMS' contracts. As stated in documents available to the auditors:

The Employee will be accountable on a daily basis to the Director of Operations for MassMEP while working in collaboration with Florida MEP staff in the performance of support of the FLMSC and CSCI; outreach to machine shop on potential contract bidding; work with field staff on promoting the CSCI and as appropriate, provide information to machine shops and assist with bid response process. MassMEP will retain authority to determine the overall performance of the Employee and both Parties will determine the effectiveness and the quality of the Services. In providing the Services, the Employee shall be bound by all policies applicable to MassMEP and, in addition, those policies and procedures that may be unique to Florida MEP, including but not limited to, the handling of proprietary and confidential information.

The contract sets forth in detail the scope of work and the nature of the services to be provided by Massachusetts MEP. The time sheets kept by the Massachusetts MEP employees record their activities and time related to the Florida MEP SupplyPoint database and the Supply Chain initiative. Pursuant to the contract and the time sheets, Florida MEP determined that the services were performed, benefit was received, and that the expenses were actually incurred on behalf of Florida MEP. On this basis, Florida MEP reasonably determined that those expenses were reasonable, allocable and allowable pursuant to their statutory authority and the terms of the cooperative agreement.⁷³

IX. QUESTIONED OTHER DIRECT COSTS

A. \$ [REDACTED] – Excess Training Materials Costs

The Draft Audit Report questioned \$ [REDACTED] in excess training material costs. As explained to the auditors, Florida MEP maintained two off-site storage facilities, one on the west coast of Florida and the other in the southeast part of the state to store training materials. Training materials were maintained in the two separate locations to make the training materials more accessible to staff members working in various locations throughout the state.⁷⁴ It was Florida MEP's policy to allow project managers to request training material that they would need for an upcoming four to six week period.

In early 2007 Florida MEP decided that the off-site storage locations would be phased out and all ordering and handling of Training Materials would be processed through the main office. The storage facilities contents were transferred to the main office. Florida MEP also returned forty-five (45) Lean 101 student guides from incomplete kits for credit. These process changes have allowed the Center to reduce its on hand inventory and remain flexible and capable of handling last minute orders based on late-scheduled training events. All training materials have been and continue to be utilized in performance of the Florida MEP cooperative agreement.

B. \$ [REDACTED] Unreasonable T-Shirt Purchase

⁷³ *Id.*

⁷⁴ Florida MEP maintains one office location in Central Florida but its project managers are located throughout Florida.

The Draft Audit Report questioned \$ [REDACTED] in clothing purchases. The clothing apparel expense questioned by the auditors is for Florida MEP branded shirts, similar to a uniform, provided for employees to wear when visiting clients and attending events. This benefits Florida MEP because it allows clients and attendees to identify and recognize the employee as associated with Florida MEP. The average of \$ [REDACTED] per employee calculated by the auditors and reported in the Draft Audit Report actually represents the initial startup costs for 2005. Those costs are now \$ [REDACTED] per employee. Florida MEP had determined that this is a reasonable and necessary expense to the accomplishment of its statutory objectives and allows it to be recognizable among the manufacturing community as an important provider of services. Therefore this cost should be allowed.

C. \$ [REDACTED] Unallowable Bad Debts

We do not contest the finding that bad debts are unallowable costs. We therefore accept the finding of \$ [REDACTED] as unallowable costs. The other claim for bad debt expenses of \$31,500 has been corrected and is currently allocated as an unallowable cost item.

D. \$ [REDACTED] – Unreasonable Rental Space Costs

The Draft Audit Report questioned \$ [REDACTED] in rental space costs associated with the work that Florida MEP does with the United States-Mexico Chamber of Commerce. As evidenced in documents available to the auditors, the United States-Mexico Chamber of Commerce assists Florida MEP and its Hispanic manufacturing clients. The United States-Mexico Chamber of Commerce assists Florida MEP in providing services to its Hispanic manufacturing clients by providing guidance relating to minority workforce development, potential grant opportunities, and other manufacturing improvement issues. Florida MEP continually submits proposals to multiple Federal agencies seeking funding to serve all manufacturers in Florida and the decision to lease office space from the United States-Mexico Chamber of Commerce was the most cost effective means of utilizing office and meeting space needs for Florida MEP representatives while in Washington, DC to work on proposals, meet with federal officials and conduct other Florida MEP business.

In the Florida MEP Strategic Plan FY 2005-2007,⁷⁵ the Center identified as one of its key strategies to serve the Hispanic manufacturing community. The Florida MEP Board of Directors determined that Florida's Hispanic population was the fastest growing segment in Florida and Florida MEP needed to address the needs of both Hispanic owned manufacturing companies and Spanish speaking workforce through a partnership with the US-Mexico Chamber of Commerce. This particular strategic thrust was also discussed in the 2005 Operating Plan.⁷⁶ Based upon

⁷⁵ See Florida MEP Strategic Plan FY: 2005-2007 page 3 Strategic Thrust #2.

⁷⁶ See Florida MEP 2005 Operating Plan at 7 & 10.

these strategic thrusts it was reasonable to be able to utilize office space within the US-Mexico Chamber of Commerce for face-to-face meetings and working sessions.

X. QUESTIONED THIRD-PARTY CONTRIBUTOR COSTS

The Draft Audit Report questioned \$99,738 in Third-Party Contributor costs from four sources “because of inadequate documentation from Florida MEP.” Draft Audit Report at 11. As noted below, Florida MEP maintained the required documentation for each of its Third-Party contributors—documentation that was available to the auditors.

A. [REDACTED]

The [REDACTED] is a not-for-profit corporation supported by the Executive Office of the Governor. The [REDACTED] is committed to providing organizations with resources and services specifically designed to meet their performance needs and promotes the development of internal expertise in organizations by offering training sessions through out Florida. The [REDACTED] promotes organizational performance excellence through three assessment tools, the [REDACTED]. The [REDACTED] promotes professional development, networking and recognition of organizations seeking performance excellence. The [REDACTED] for [REDACTED] is based on the [REDACTED].

Florida MEP and the [REDACTED] offer services and resources specifically designed promote professional development and performance excellence in small and medium sized manufacturers throughout the State of Florida consistent with the statutory authorization of the MEP program.⁷⁷ Several of Florida MEP’s project managers were certified as [REDACTED]. Florida MEP was recognized as a [REDACTED]. Florida MEP provides general support on [REDACTED] activities, such as, providing facilities and conference call capabilities to facilitate coordination of committee meetings. Florida MEP project managers are members of the [REDACTED] the [REDACTED] the [REDACTED] and the [REDACTED] and workshop sub-committee, planning and managing the manufacturing track at next conference. Each of these tasks provides for better coordination of and access to critical information necessary for Florida MEP to perform its statutorily identified tasks. Of note, Former Governor, Jeb Bush, acknowledged Florida MEP project manager, [REDACTED].

As described in the approved Florida MEP Operating Plan, the “in-kind” cost share contributed by the [REDACTED] to Florida MEP was the result of the collaborative efforts to co-sponsor programs that enhance organizational performance excellence through lean manufacturing processes and professional development through educational training and seminars.⁷⁸ Florida MEP utilizes as “in-kind” cost share a select portion of time spent by [REDACTED] completing manufacturer assessments and assisting manufacturers with performance excellence.

Source Documentation

⁷⁷ Florida MEP – Florida [REDACTED] Schedule A Ex. 47

⁷⁸ See Florida MEP 2005 Operating Plan at 43.

In support of the Agreement between Florida MEP and the [REDACTED] of the [REDACTED] submits an annual progress report that outlines the activities of the parties and the cost share contribution. The report details by month the type of activity, number of examiner hours invested per examiner, total hours by manufacturing sector examiners, the amount of money invested by each examiner, total dollars invested by manufacturing sector examiners and the manufacturing sector related dollars invested by the [REDACTED].⁷⁹ In addition, the report shows the pro-rated general marketing expenses for the [REDACTED]. The pro-ration percentage is based on manufacturing participation in the previous [REDACTED] and the number of manufacturing companies participating on the [REDACTED]. Florida MEP reviews the [REDACTED] report and supporting documentation and determined that the expenditures of [REDACTED] on behalf of manufacturers were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution".

B. [REDACTED]

The [REDACTED] was organized in early 2006 to [REDACTED]. It was formed from the blending of the activities of the [REDACTED].

Its purpose is to improve Florida's manufacturing business climate. [REDACTED] is not a typical "membership" organization in that it will not replace the existing state, local and regional manufacturing associations in Florida. Instead, it is intended to enhance the power of those organizations and all manufacturers in this state by providing a forum for them to work collaboratively as associations and as individual manufacturing companies.

Florida MEP is a founding member of [REDACTED] and participates on the [REDACTED].⁸⁰ Florida MEP also [REDACTED].

Source Documents

[REDACTED] provides Florida MEP a profit and loss statement that shows its expenditures furthering the MEP mission. Florida MEP reviews [REDACTED] financial reports and determined that the expenditures of [REDACTED] on behalf of manufacturers were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution".⁸¹

C. [REDACTED]

The [REDACTED] was established by the Florida Legislature in 1987 as an Independent Special District of the state. It is served by a five-member board of directors, each personally appointed by the Governor of Florida. The key to [REDACTED] success has been its partnerships with numerous local, state and federal agencies, as

⁷⁹ See [REDACTED]

⁸⁰ Florida MEP - [REDACTED] Memorandum of Understanding Ex. 50

⁸¹ [REDACTED] Profit & Loss Statement Ex. 51

well as the private sector, to generate tens of millions of dollars in funding to support education and economic development initiatives. During the past 18 years, [REDACTED] has chartered an aggressive course in making technology work for America.

Florida MEP and [REDACTED] collaborate to deliver successful and cost-effective transfer of cutting edge technologies to manufacturers throughout the State of Florida.⁸² The former Executive Director of [REDACTED] was a member of the Florida MEP Board of Directors.

As outlined in the NIST-approved Florida MEP Operating Plan and Budget, the cost share provided by [REDACTED] is related to its expenditures for [REDACTED] state programs. Specifically, the expenses are "consultant/contractor and operating expenses expended by [REDACTED] for the [REDACTED] both of which target and are utilized for manufacturers."⁸³

Source Documents

[REDACTED] provides Florida MEP with financial reports that show its expenditures for the specified [REDACTED] which Florida MEP reviews and determined that the expenditures of [REDACTED] on behalf of manufacturers were "programmatically reasonable and allocable" and were therefore "includable as a portion of the Center's contribution".⁸⁴

D. \$[REDACTED] – Former Maine MEP Employee

Travel costs for the employee hired on 3/1/07 are necessary and reasonable. The employee was a Maine resident at that time and he needed to relocate his family from Maine, sell his home in Maine and look for similar housing in the State of Florida. The airfares were reasonable and the most inexpensive airfares and airlines were utilized.

E. \$[REDACTED] – Board Member's Consulting Contract

This payment reflects the amount of compensation of the Board member traveling expenses for travel to Washington, DC and to Tallahassee, FL. As identified below, these travel costs were not allowable and we accept they should not have been claimed under the award.

XI. LOBBYING COSTS

The auditor inaccurately assumes that all costs associated with the American Small Manufacturers Coalition (ASMC) and the Manufacturers Association of Florida (MAF) were lobbying costs and recommends to disallow them summarily. All of the costs the auditor questioned under this section were either costs associated with activities that failed to even meet

⁸² Florida MEP – [REDACTED] Agreement Ex. 52

⁸³ Florida MEP 2005 Operating Plan at 39.

⁸⁴ [REDACTED] Financial Reports 53

the definition lobbying⁸⁵ or simply excluded from unallowable lobbying costs under OMB Circular A-122 lobbying cost⁸⁶.

§ [REDACTED] ASMC Membership Dues and § [REDACTED] – MAF Membership Dues

Both ASMC and MAF are trade associations and their membership dues are allowable as membership in a business technical or professional organization under OMB A-122 Attachment (B)(30).⁸⁷ The amount paid for dues in these professional organizations do not meet the definition of lobbying expenses under OMB A-122 Attachment B (25) because they were not used to influence the outcomes of any elections, assist any political party in campaigning or other political activity, influence introduction or modification of any pending legislation or otherwise constitute unallowable lobbying.⁸⁸ These organizations have taken measures to ensure that funds allocated for lobbying are separate from membership dues.

ASMC is a national trade association that serves manufacturing extension agents that strive to increase the awareness of the needs of small manufacturers among the small manufactures, the general public, as well as Congress. Although ASMC has a lobbying component to its activities, lobbying is not its sole purpose. The auditor states that ASMC spent \$ [REDACTED] on lobbying from July 2005 through June 30, 2007 however this is only a portion of its overall budget. According to ASMC's fiscal years October 1, 2005, through September 30, 2007 the total revenue equaled \$ [REDACTED]. Membership dues are actually divided such that participating in lobbying activities involves separate fee in order to avoid use of restricted funds in lobbying activities.⁸⁹ This bifurcation of income and expenses protects against any expenditure of membership dues on lobbying activities paid by restricted funds of the MEP Centers.

⁸⁵ See OMB Circular A-122 Attachment B(25)(a).

- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;
- (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
- (3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;
- (4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or
- (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

⁸⁶ See *id* at (b)(1).

⁸⁷ See *id* at (30)(a) and (b) (allowing costs of "memberships, subscriptions and professional activity costs of the non-profit organization's membership in business, technical, and professional organizations are allowable, ... costs of the non-profit organization's subscriptions to business, professional, and technical periodicals are allowable." See also Health Systems Agency of Central Georgia, Inc., DAB No. 341 (1982) (allowing costs for membership dues but not supplemental dues).

⁸⁹ See Exhibit 54 OIG Dues Payment Clarification, letter dated 9/17/2008 (explaining that ASMC membership dues were applied *only* to ASMC's general and administrative expenses).

Similarly, MAF is a statewide initiative with the same goals as ASMC on a smaller scale and its activities are described above. Because the auditor was unable to apprehend that only a portion the organizations' overall activities constituted lobbying, he questioned the entire, otherwise allowable membership fees. The auditor failed to recognize that in fact *none* of the membership fees claimed as a cost under the Florida MEP Cooperative Agreement for ASMC and MAF supported lobbying activities because the membership fees were separate from funds associated with lobbying. MAF does other activities besides lobbying. They issue newsletters, host an annual manufacturing summit (3 day event), and do outreach to manufacturers regarding training.

Activities for Hill Day and Capital Day generally are not included in the definition of lobbying under A-122 because their purpose is to merely provide information to members of Congress about the MEP program. Both Hill Day and Capital Day are opportunities where members of ASMC and MAF attend meetings to educate legislators of the needs of small manufacturers as well as the successes of the MEP program. Although the Cost Principles prohibit lobbying under OMB A-122 Attachment B Section 25(a)(3)-(5), subsection (b) excludes activities that provide factual information to members of Congress. In any event, ASMC uses funds specifically allocated for lobbying for its Hill Day budget and money from Florida MEP membership dues does not go toward those activities.

\$ [REDACTED] - ASMC Public Relations Campaign

The auditor suggests a disallowance of costs that Florida MEP never expended. Without an expenditure of funds, there are no costs to disallow. The auditor notes in the finding that the funds were returned to Florida MEP after the campaign was cancelled. Thus any proposed disallowance regarding these funds is moot even if those funds actually constituted disallowable lobbying expenditures and we contest the auditor's recommendation to disallow the \$ [REDACTED]. It is unclear why this was included in the report at all.

\$ [REDACTED] - Lobbying Travel Costs

Despite the fact that the other costs related to educating the members of Congress and the Florida legislature were allowable, Florida MEP does not dispute that the associated travel costs are unallowable. However, \$ [REDACTED] included in the \$ [REDACTED] was not allocable or claimed under the Florida MEP cooperative agreement. The payments by Florida MEP make that clear. The travel expenses, even if expended for the permissible purposes under OMB Circular A-122, Attachment B Section 25.b., "travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing." The Florida MEP employees did not travel for these purposes. Therefore, \$ [REDACTED] should be disallowed.⁹⁰

In any event membership dues were not used toward travel costs for Hill Day or Capital Day. If the auditor is suggesting that the disallowance is in order merely because Florida MEP

⁹⁰ Peter Weymouth former FL Director went to DC and Peter and Gene Lussier, Chair of BOD went to Tallahassee.

employees participated in activities associated with ASMC and MAF, we dispute the disallowance.

XII. EXCESS PROGRAM INCOME

The Draft Audit Report states that Florida MEP “had no excess program income” and therefore it inaccurately reported unrestricted net assets. The Draft Audit Report rejects the concept that Florida MEP could generate any “unrestricted” excess program funds. Yet, NIST MEP authorized officials provided specific instructions to all of the MEP Centers, including Florida MEP, as to how they could generate and retain “unrestricted” funds through its Operating Guidelines, Audit and Compliance Guides, Terms and Conditions, Formal Presentations at MEP Conferences, written and verbal communications, and postings on the MEP intranet. Florida MEP disagrees with the Draft Audit Report’s interpretation that to calculate excess program income Florida MEP must ignore all other sources of non-federal expenditures, and apply all excess program income retroactively. Florida MEP disagrees that any of the \$ [REDACTED] spent on activities in furtherance of the MEP mission must be refunded to NIST.

NIST MEP authorized officials instructed that the Florida MEP’s cooperative agreement is a cost-reimbursement type agreement, and that after properly accounting for the expenditure of federal funding, state funds, program income, and the reasonable, allowable, and allocable cost contributions of partnering entities, the non-federal share (two-thirds) of any remaining funds at the end of the annual award period could be retained by Florida MEP as “unrestricted” funds.⁹¹ NIST MEP authorized officials stated that these “unrestricted” funds could be used for capacity building, as a reserve for “maintenance of effort”, and for other expenditures⁹² This position is consistent with the long-stated position that if a grant has “excess” program income, those funds may be spent on expenses that are “not otherwise permissible as charges to federal funds.” *Anchorage Neighborhood Health Center*, U.S. Health and Human Services Departmental Appeals Board Decision, DAB No. 561 (August 6, 1984).

Authorized NIST program staff correctly provided guidance to Florida MEP and the other MEP Centers over the years that under cost-reimbursement cooperative agreements the MEP Centers may retain unexpended program income (“UPI”) and that it is a source of “reserves.” Centers were instructed to maintain a reserve in order to support the Center during periods of inadequate funding or to accommodate cash flow. Pursuant to NIST instruction, Centers operated with the understanding that any reimbursement funds remaining after a Center accounted for partner cost share contributions and program income were “unrestricted” to the extent of the non-federal share⁹³ Under prior MEP General Terms and Conditions, NIST directed that “program income be retained by recipient and shall be used to finance any non-Federal share of the project.” In October of 2006 that clause was amended to allow Centers to carry over excess program income

⁹¹ See *Presentation on Program Income* attached as Ex 61.

⁹² See *email from Margy Phillips to NIST EMP Task Group on Program Income. Ex. 57*

⁹³ See letter from Margy Phillips regarding “unrestricted” reserves and *Presentation on Program Income* by Mike Simpson attached as Exs. 60 and 61.

without a separate prior approval so long as it is declared and explained in the Center's annual operating plan.⁹⁴

The concept that MEP Centers may have "unrestricted" funds has been long supported by authorized NIST officials. It was addressed in a letter⁹⁵ from M. Phillips, former NIST Deputy Director, stating the following:

If the recipient (in this case ***) has correctly requested reimbursement for expenses, and a portion of that reimbursement can then be put into reserve, as long as those funds are not being utilized to satisfy cost share requirements for the award, they are "colorless" and therefore available to be used for any program purpose.

In the 2001 Compliance Guide issued by NIST MEP, dated November 7, 2001, authorized NIST officials explained that excess or "undisbursed" program income "temporarily increases the restricted net assets of the organization" to the extent of the federal share of the excess program income. See 2001 Compliance Guide at p.84.⁹⁶ The Compliance Guide also provided a precise calculation method for determining excess program income. *Id.* The calculation clearly shows that total program expenses should be reduced first by all sources of cost share, including federal, state, and other cash cost share, and in-kind cost share, to arrive at "expenses available to be financed by program income". This calculation clearly shows that program income is used only to the extent required to meet the non federal portion of the award. If the non-federal portion of the award was met entirely with cost share, there could be no obligation to use program income to meet the non-federal portion of the award.

The 2005 Operating Plan Guidelines announced that the Audit and Compliance Guide was currently under revision but was available on www.mepcenters.nist.gov. This version did not contain any new or different terms on program income.

In April of 2006, as an amendment to the Cooperative Agreements for the July 1, 2005 to June 30, 2006 program year, NIST MEP issued new MEP General Terms and Conditions that contained the following term on program income:

Program income earned during the project period shall be retained by the recipient and shall be used to finance any non-Federal share of the project.⁹⁷

Excess program income may be carried over to the subsequent funding period, if the Center obtains the grants officer's prior written approval. When closeout commences, the NIST share of

⁹⁴ Update of MEP Activities, E-mail to MEP System from Roger Kilmer, October 5, 2006. Ex. 62

⁹⁵ Letter from M. Phillips to B. Zider, June 6, 2001. A copy is attached at Ex 58.

⁹⁶ A copy is attached as Ex 63..

⁹⁷ *General Terms and Conditions*, Hollings Manufacturing Extension Partnership, April 2006, ¶ 15(A).

any unobligated funds must be returned to NIST within 90 days after the expiration of the award.⁹⁸

This provision still did not alter the 2001 Compliance Guide's calculation and treatment of program income. It only required that a Center obtain the Grant Officer's prior written approval to carry forward program income. The May 2006 Draft Compliance Guide, published for the May MEP Conference also did not alter the 2001 Compliance guide for the calculation of undisbursed program income nor did it say anything new regarding undisbursed program income. Therefore the controlling language remains that of the 2001 Compliance Guide.

The auditor's position that program income earned by Florida MEP "could have been used to meet the matching share requirement of the award with no excess to carry over" is in direct conflict with the NIST MEP Compliance Guide and other guidance from NIST MEP, and overstates the payment requirement at 15 C.F.R. § 14.22. The NIST MEP Compliance Guide, the NIST MEP position paper on the treatment of program income, and the NIST MEP General Terms and Conditions all recognize that Centers may have program income in excess of what is required annually to meet the non-federal portion of the award. The NIST MEP position is also supported clearly in the correspondence issued to Centers by the program income working group established in May 2006.⁹⁹ The position paper describes program income as a necessary part of the program and one of the "core principles of the program from its inception". The NIST Chief of the Grants Office and legal counsel, after consulting with KPMG, came to the conclusion that the "regulations do not conflict with one each other. Instead, there was a consensus that they operate together and that 15 C.F.R. 14.22(g) is to be interpreted within the context of 15 CFR 14.24(b)(2). In other words, it was agreed that 15 C.F.R. 14.22(g) does not require a recipient to use program income to fund the recipient's Federal cost share requirement. It states "to the extent feasible." However, the Draft Audit Report does not recognize this fact and takes the contrary position that Florida MEP should not have retained any undisbursed and unrestricted program income.

Florida MEP acted in reasonable reliance upon express statements by authorized NIST MEP officials in their treatment of program income. See *United States v. Tallmadge*, 829 F.2d 767, 773 (9th Cir. 1987). See also *Raley v. Ohio*, 360 U.S. 423, 438 (1959) (To succeed under a defense of entrapment by estoppel, the defendant must show that the government affirmatively stated that the proscribed conduct was permissible and that the defendant acted in reasonable reliance on the government's statement.). Even if NIST MEP program had not provided specific guidance, Florida MEP is correct in retaining unrestricted program income. Most program income generated under MEP awards results from the fees paid by private manufacturing firms and individuals for services or for fees paid by conference participants or sponsors. These fees are paid with private dollars, not federal dollars. The costs of providing the services are funded only in part with federal dollars either by the Florida MEP or its partners. Under Term 15 of the MEP General Terms and Conditions of the cooperative agreement and the administrative regulation at 15 C.F.R. §14.24(b)(2), NIST directs MEP Centers to apply any program income to the non-federal cost share. The Draft Audit Report correctly stated that Florida MEP generated program income, as defined at 15 C.F.R. § 14.2(aa), by the tuition or other fees paid by

⁹⁸ *Id.* at ¶ 15(F).

⁹⁹ Ex. 56 & 57.

manufacturers who attend training classes, conferences, and other events sponsored by the MEP Center and/or its partners. Florida MEP reports the program income on the SF 269, and the Draft Audit Report correctly states that it generated and reported \$ [REDACTED] during the 7 quarters audited.

While there is clear legal support for the position that all excess program is unrestricted at some point, at most, only a portion of it is restricted. Program income does not automatically acquire a federal character and is not required to be deposited in the Treasury as miscellaneous receipts.¹⁰⁰ The "recipient organization must account for program income related to projects financed in whole or in part with federal funds."¹⁰¹ It may be retained by the grantee for grant related use.¹⁰² Clearly the federal government acknowledges the limited "federal character" or limited "federal interest" in the expenditure of the program income because the funds are generated with private dollars. At the very most, only a proportion of the "excess" program income is refunded to the agency when it reduces the overall costs of the award. This has been acknowledged by the Office of Inspector General in other audit reports. This is clearly the position of federal agencies that directly address program income generated under matching grants.

Neither NIST nor the Department of Commerce have a regulation that specifically addresses the treatment of program income under cost share grants. A review of federal agencies' implementations of 2 C.F.R. § 215.24 regarding the treatment of program income under matching grants establishes that the federal interest in program income is limited to the percentage of federal participation in the award:

1. The Department of Justice has determined the following: Where a program is only partly funded by Federal funds, the Federal portion of program income must be accounted for up to the same ratio of Federal participation as funded in the project or program.¹⁰³ (Emphasis added.) For example: If a recipient was funded by formula/block funds at 75 percent Federal funds and 25 percent non-Federal funds and the total program income earned by the grant was \$100,000, \$75,000 must be accounted for and reported, by the recipient, as program income on the Financial Status Report (SF 269).¹⁰⁴
2. The Housing and Urban Development provides: (e) *Program income.* (1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds . . . When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (emphasis added).¹⁰⁵

¹⁰⁰ B-191420 (August 24, 1978) at p.4 and 44 Comp. Gen. at 87-88 (1964) which established that income generated from federal funds was not subject to section 3617 of the Revised States, 31 U.S.C. § 484 (1970).

¹⁰¹ 15 C.F.R. § 14.23(b)(3) provides that if excess program income, one deducts only the federal share. This calculation was applied by the auditor in the recent audit of Massachusetts MEP.

¹⁰² GAO Appropriations Law – Vol. II, Page 10-56.

¹⁰³ *Financial Guide*, Office of Justice Programs, U.S. Department of Justice, Chapter 4, available at <http://www.ojp.usdoj.gov/finguide06/part3/part3chap4/part3chap4.htm>.

¹⁰⁴ *Id.*

¹⁰⁵ 24 C.F.R. § 570.489(e)(1).

3. The interpretation adopted by the Department of Justice has also been adopted by the Department of the Interior, Office of Surface Mining ("OSM"). The OSM, in their Federal Assistance Manual, adopts the principle through their definition of federal Share:

(For programs that have a matching or cost sharing requirement) the percentage of Federal participation. The percentage of the net cost (i.e., total cost less program income earned) of an activity borne by OSM represents the Federal share of the cost of the activity. The Federal share of any grant or cooperative agreement related income produced by that activity is determined by applying the same percentage factor.¹⁰⁶ (Emphasis added.)

4. The National Endowment for the Humanities has a specific policy regarding Program Income which states: "The federal share of program income is determined by the percentage of total project costs that are supported by NEH."¹⁰⁷

These other agencies' implementations of 2 C.F.R. § 215.24(b)(2), are consistent with the concept of non-federal cost-share, where program activities are not wholly funded by federal funds. The federal government's interest in any program income generated under the award only exists in the same proportion as its contribution of federal funds to the activity.

In the 2007-2008 operating plan, which was subsequently approved by NIST MEP program Officer, Grants Officer, and legal counsel, included the following language in compliance with MEP Terms and Conditions:

Undisbursed Program Income: \$ [REDACTED] The Florida MEP has \$ [REDACTED] in undisbursed program income. None of the Undisbursed Program Income is budgeted to be expended during the cooperative agreement year. That amount will be kept in the fund balance to offset risk associated with delayed or reduced funding from the MEP program. The undisbursed program income is part of the center's planned program income level (reserve), which the center plans to maintain for such risk. The Center would like to increase this planned program income level in the future, although it is not expecting to add to it during the 2007-2008 operating year.

The Draft Audit Report cannot simply ignore the authorized review and approval of the use of the undisbursed program income by Florida MEP. Florida MEP retains excess program income as a reserve and will expend it on purposes consistent with the Florida MEP mission. The final audit report should remove any finding questioning the program income that reported and retained by Florida MEP as a reserve. The final audit report should remove the finding that \$294,000 be refunded to NIST.

¹⁰⁶ Federal Assistance Manual, Office of Surface Mining, Department of the Interior, available at <http://www.osmrc.gov/fam/defin.htm>.

¹⁰⁷ See http://www.neh.gov/manage/income_recovery.html.



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